BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: JOEL DAVID SHIFFLER, M.D.

NOTICE OF REVOCATION

This Notice is entered pursuant to the Amended Consent Order by and between the West Virginia Board of Medicine ("Board") and Joel D. Shiffler, M.D. ("Dr. Shiffler") of February 25, 2008 (attached hereto as "Exhibit 1").

On May 22, 2007, the Board and Dr. Shiffler entered into a Consent Order, wherein Dr. Shiffler's West Virginia medical license was suspended for a period of eighteen (18) months following the entry of the Order, unless earlier dissolved, and the suspension was stayed immediately (attached hereto as "Exhibit 2"). Dr. Shiffler was permitted to continue to practice medicine without restriction, pending his compliance with the terms and conditions set forth in the May 22, 2007, Consent Order.

Within six (6) months following the entry of the May 22, 2007, Consent Order, Dr. Shiffler was to attend the Colorado Personalized Education for Physicians ("CPEP") for a comprehensive assessment of his skills as a physician. The assessment was conducted in June of 2007, with a copy of the assessment sent directly to the Board's Complaint Committee for review (attached hereto as "Exhibit 3"). The CPEP assessment stated, in part,

> Overall, Dr. Shiffler's knowledge was broad but superficial. His clinical judgment and reasoning were poor. Dr. Shiffler's communication skills were adequate with SPs and peers. His documentation skills were unacceptable for both the SP encounters and actual patient records. Dr. Shiffler has a condition that has the potential to impact his medical practice. His cognitive function screen was within normal limits.
>
> Exhibit 3 at 22 ¶ F.

The assessment recommended that Dr. Shiffler undergo a CPEP Educational Intervention Plan, which included a program of supervised education. "Because of the extent of the deficiencies identified, the best option would be for Dr. Shiffler to retrain for a period of time in a residency or residency-like setting." *Id.* at 24.

Dr. Shiffler appeared before the Complaint Committee in January 2008, to discuss the contents and conclusions of the CPEP assessment report. After meeting with Dr. Shiffler

regarding the CPEP assessment, the Complaint Committee determined that additional conditions, limitations or restrictions were necessary and offered Dr. Shiffler the Amended Consent Order.

On February 5, 2008, Dr. Shiffler wrote to Governor Manchin seeking his aid (attached hereto as "Exhibit 4"). In his letter, Dr. Shiffler requested of the Governor, "if you can free me, I will promise a fair number of high tech jobs to the state of West Virginia..." *Id.* Dr. Shiffler further asked the Governor to

> ...be the arbitrator at listening to what My lawyer and I have seen as inconsistencies in the Board of Medicine alliance with demands on me to see an Education Planning group who have unfairly evaluated my ways of practice. All of this comes from the board's vigilance to hearing continued suspicious hype and gossip about me and not the truth...
>
> *Id.*

The Governor's office directed Dr. Shiffler, by letter, to the Board and to Dr. Shiffler's own counsel (attached hereto as "Exhibit 5").

Dr. Shiffler agreed to and signed the Amended Consent Order on February 14, 2008.

The Amended Consent Order continued the suspension of Dr. Shiffler's license from the previous Consent Order entered on May 22, 2007, until May 22, 2009. The Amended Consent Order required Dr. Shiffler to obtain and fulfill a CPEP Educational Intervention Plan and to receive continued and regular treatment with a Board approved psychiatrist who was to report to the Board every sixty (60) days.

CPEP requested by letter of July 31, 2008, submission of candidates for preceptor and noted that one should be identified within thirty (30) days (attached hereto as "Exhibit 6"). Dr. Shiffler initiated the Education Plan with CPEP in August, 2008. The CPEP Education Plan requires a Preceptor participate in the reeducation and supervision of Dr. Shiffler in Module B (Point of Care Experience) to "broaden his foundation of skills and knowledge for improved patient care..." Exhibit 7 at page 3 of 6. The Preceptor also participates in the reeducation and supervision of Dr. Shiffler in Module C and D to determine adequate progress in Dr. Shiffler's clinical judgment and documentation. Exhibit 7 at page 4 of 6.

In November, 2008, the Executive Director for the Board sent a letter to Dr. Shiffler noting, "the Complaint Committee understands that you have tried to obtain a preceptor and have not succeeded, but simply stated, this is not good enough." Exhibit 8. Further, Mr. Knittle stated,

It is essential that the many deficiencies described in the CPEP report be addressed, and promptly. The Complaint Committee is not of the opinion that it is in the public interest to let you continue to practice without your full participation in the Educational Plan.

Id.

Finally, the Executive Director noted that the Complaint Committee was of the opinion that Dr. Shiffler was in violation of the Amended Consent Order, but rather than lift the stay of the suspension, to allow Dr. Shiffler "...one more chance and to emphasize the importance of your adhering to what you have agreed to do." *Id.*

The Committee offered another Consent Order at that time which was ultimately rejected by Dr. Shiffler.

On January 8, 2009, Counsel for Dr. Shiffler sent the Board a letter noting Dr. Shiffler's difficulty in obtaining a preceptor (attached hereto as "Exhibit 9"). On January 14, 2009, Counsel for the Board responded to Dr. Shiffler's counsel regarding the preceptor search (letter attached hereto as "Exhibit 10"). Counsel for the Board noted that despite Dr. Shiffler's efforts to date there remained considerable deficiencies and that the Complaint Committee had determined that regardless of these efforts that without a preceptor in place it was not safe for the public for Dr. Shiffler to continue to practice medicine. Further, Counsel for the Board noted that Dr. Shiffler had failed to sign the Consent Order offered to him in November, 2008. Counsel for the Board also offered a "Second Amended Consent Order" at that time. Dr. Shiffler rejected this "Second Amended Consent Order."

In late April, 2009, Dr. Shiffler, by counsel, indicated to the Board that a preceptor had been found who had agreed to supervise Dr. Shiffler in accordance with the CPEP plan. By letter of April 23, 2009, the Executive Director of the Board acknowledged this, but noted that time was of the essence due to the Amended Consent Order expiring on May 22, 2009 (letter attached hereto as "Exhibit 11"). On May 19, 2009, three (3) days prior to the expiration of the Amended Consent Order, Counsel for Dr. Shiffler notified the Board that CPEP had agreed to accept Dr. K.S. Rao as the preceptor. By that time, however, there was no longer enough time to complete the CPEP plan prior to May 22, 2009. The Board, out of an abundance of patience and fairness, offered to allow Dr. Shiffler to enter into a Second Amended Consent Order to allow enough time to complete the preceptor oversight portion of the Educational Plan.[1] The Board,

[1] Note that this was a separate and distinct "Second Amended Consent Order" than that offered and rejected by Dr. Shiffler in January of 2009.

by counsel, and Dr. Shiffler, by counsel, agreed to enter into a Second Amended Consent Order which would begin on May 23, 2009, and end on May 23, 2010, in order to allow Dr. Shiffler to complete the CPEP remedial education. Disciplinary Counsel discussed with the Medical Director at CPEP the time required to complete the preceptor portion of the Educational Plan. Disciplinary Counsel for the Board prepared the Second Amended Consent Order (the fifth Consent Order offered to Dr. Shiffler in this matter) and worked with Dr. Shiffler's counsel to refine the language of the Order to both parties' satisfaction (see attached "Exhibit 12"). Disciplinary Counsel to the Board was assured by Dr. Shiffler's counsel that said Order would be signed by Dr. Shiffler in short order. After many phone and email communications with Dr. Shiffler's counsel, the Board was notified on or about Wednesday, July 8, 2009, that the preceptor had withdrawn and would no longer agree to supervise Dr. Shiffler in a CPEP remedial education plan (see attached "Exhibit 13").

At its regular meeting on July 13, 2009, with a quorum of the Board present, the Board heard a report of the Complaint Committee which recommended that the Board revoke the license of Dr. Shiffler. All of the exhibits to this notice were provided to all Board members present and eligible to vote, as well.

The Board is of the opinion that the preceptor component of Dr. Shiffler's remedial reeducation plan is a vital and essential component of that plan and that Dr. Shiffler's non-compliance with this component is fatal to the accomplishment of the plan.

After hearing the Complaint Committee report, the Board members with a quorum present and voting determined unanimously that Dr. Shiffler's license to practice medicine and surgery in West Virginia be revoked and voted to effect the same in the interests of patient health, safety and welfare. Dr. Ferrebee, Dr. Wazir and Rev. Bowyer did not vote by virtue of their membership on the Complaint Committee which made the recommendation.

The bases for the Board's decision included the fact that the Complaint Committee has determined, in accordance with the Amended Consent Order, that Dr. Shiffler has not made a good faith effort to comply with the terms of the Amended Consent Order. The decision further included the fact that Dr. Shiffler agreed with the terms of the Amended Consent Order, including paragraph twelve (12) at page seven (7), which allows the Board to revoke his license

without further hearing or process.[2] Accordingly, in conformity with the July 13, 2009, vote of the Board hereinabove set forth, Dr. Shiffler's license to practice medicine and surgery is revoked pursuant to the terms and conditions of the February 25, 2008, Amended Consent Order, as hereinabove set forth, effective July 15, 2009, at 12:01 a.m., and as of this time Dr. Shiffler's license, No. 20094, is **REVOKED**.

Dated this 13th day of July, 2009.

WEST VIRGINIA BOARD OF MEDICINE

John A. Wade, Jr., M.D.
President

Catherine C. Slemp, M.D., M.P.H.
Secretary

[2] "12. At the end of May 22, 2009, if the Complaint Committee of the Board determines, in its sole discretion, that Dr. Shiffler has not made a good faith effort to comply with the terms and conditions of this Amended Consent Order, then the Complaint Committee of the Board may recommend that the Board **REVOKE** the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, which the Board may do without further hearing or process." (*Emphasis in the original*).

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: JOEL DAVID SHIFFLER, M.D.

FILE COPY

AMENDED CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Joel D. Shiffler, M.D. ("Dr. Shiffler") freely and voluntarily enter into the following Amended Consent Order pursuant to the provisions of W. Va. Code § 30-3-14, et seq.

FINDINGS OF FACT

1. Dr. Shiffler currently holds a license to practice medicine and surgery in the State of West Virginia, License No. 20094, issued originally in 1999. Dr. Shiffler's address of record is in Parkersburg, West Virginia.

2. On May 22, 2007, the Board and Dr. Shiffler entered into a Consent Order, wherein Dr. Shiffler's West Virginia medical license was suspended for a period of eighteen (18) months following entry of the Order, unless earlier dissolved, and the suspension was stayed immediately, and Dr. Shiffler was permitted to continue to practice medicine without restriction, pending his compliance with the terms and conditions set forth in the May 22, 2007, Consent Order.

3. Within six (6) months following entry of the May 22, 2007, Consent Order, Dr. Shiffler was to attend the Colorado Personalized Education for Physicians ("CPEP") for a comprehensive assessment of his skills as a physician. The assessment was

conducted on June 28 – 29, 2007, and a copy of the assessment was sent directly to the Board's Complaint Committee for review.

4. The CPEP assessment revealed some deficiencies and recommended, in part, that Dr. Shiffler undergo the CPEP Educational Intervention Plan, which includes a program of supervised education. The Educational Intervention Plan would be designed to allow Dr. Shiffler to continue to practice medicine while concurrently addressing educational goals.

5. Pursuant to the May 22, 2007, Consent Order, Dr. Shiffler appeared before the Complaint Committee in January, 2008, to discuss the contents and conclusions of the CPEP assessment report.

6. After meeting with Dr. Shiffler regarding the CPEP assessment report, the Complaint Committee determined that appropriate additional conditions, accommodations, limitations or restrictions are necessary to ensure that Dr. Shiffler remains fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

CONCLUSIONS OF LAW

1. The Board has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. W. Va. Code § 30-3-1.

2. Prior to entry of the Consent Order on May 22, 2007, the Board found probable cause to substantiate charges against Dr. Shiffler pursuant to W. Va. Code § 30-3-14(c)(17), 11 CSR 1A 12.1 (e), (j), (w) and (x), and 11 CSR 1A 12.2(a)(C) and 12.2 (d), relating to unprofessional conduct, failing to practice medicine with that level of care,

skill and treatment which is recognized by a reasonable, prudent, physician engaged in the same or similar specialty as being acceptable under similar conditions and circumstances, prescribing controlled substances and other medications for personal use, and failing to conform to the principles of medical ethics of the American Medical Association, including opinion 8.19 regarding self-treatment.

3. The Board has determined that it is appropriate and in the public interest to enter into this Amended Consent Order.

4. This Amended Consent Order between the Board and Dr. Shiffler supersedes the prior Consent Order entered on May 22, 2007, between the Board and Dr. Shiffler.

CONSENT

Joel D. Shiffler, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Amended Consent Order provided for and stated herein, and the proceedings conducted in accordance with this Amended Consent Order, to the following:

1. Dr. Shiffler acknowledges that, prior to entry of the May 22, 2007, Consent Order, he had the following rights, among others: the right to a formal hearing held in accordance with W. Va. Code §30-3-14(h) and §29A-5-1, et seq.; the right to reasonable notice of said hearing; the right to be represented by counsel at his own expense; and the right to cross-examine witnesses against him.

2. By entering into the Consent Order on May 22, 2007, relative to his practice of medicine and surgery in the State of West Virginia, Dr. Shiffler waived all rights to such a hearing.

3. Dr. Shiffler now consents to the entry of this Amended Consent Order, which supersedes the Consent Order entered on May 22, 2007.

4. Dr. Shiffler further understands that this Amended Consent Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the Consent of Dr. Shiffler, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. Pursuant to the May 22, 2007, Consent Order, the license to practice medicine and surgery of Dr. Shiffler was suspended for a period of eighteen months (18) months, beginning on May 22, 2007, and ending on November 22, 2008, unless earlier dissolved by the Board, and said suspension was **STAYED** immediately, subject to Dr. Shiffler's compliance with the terms and conditions set forth in the Order.

2. Pursuant to the May 22, 2007, Consent Order, the Complaint Committee of the Board retained the right, in its sole discretion, to recommend appropriate additional conditions, accommodations, limitations or restrictions, which it deems necessary to ensure that Dr. Shiffler remains fully capable of practicing medicine and

surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

3. Pursuant to the May 22, 2007, Consent Order, if the Complaint Committee of the Board, at the end of the one (1) year period following entry of the May 22, 2007, Consent Order, were to determine, in its sole discretion, that Dr. Shiffler had not made a good faith effort to comply with the terms and conditions of the May 22, 2007, Consent Order, then the Complaint Committee of the Board could recommend that the Board revoke the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, without further hearing or process.

4. Notwithstanding provisions in the May 22, 2007, Consent Order authorizing the revocation of Dr. Shiffler's license to practice medicine and surgery in the event of non-compliance, the Board has determined that the suspension of Dr. Shiffler's license should be extended for an additional period of six (6) months for a total of two (2) years, and the stay should remain in effect during this time, provided that certain additional conditions and limitations are placed upon Dr. Shiffler's license to practice medicine and surgery in the State of West Virginia, as set forth in more detail below.

5. The license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, License No. 20094, remains **SUSPENDED,** which suspension is now extended until May 22, 2009, unless earlier dissolved as described in more detail below, and the suspension remains **STAYED** immediately, and Dr. Shiffler can continue to practice medicine without restriction, pending his compliance with the terms and conditions set forth in this Amended Consent Order.

6. Within six (6) months following the entry of this Amended Consent Order, Dr. Shiffler shall arrange, at his own expense, a supervised Educational Intervention Plan through CPEP, and any CPEP Educational Intervention Plan concerning Dr. Shiffler shall be sent directly to the offices of the Board to be provided to the Complaint Committee of the Board for review.

7. Upon receipt of any CPEP Educational Intervention Plan concerning Dr. Shiffler, the Complaint Committee of the Board may, in its sole discretion, at any time prior to May 22, 2009, recommend appropriate additional conditions, accommodations, limitations or restrictions, which it deems necessary to ensure that Dr. Shiffler completes the Board approved Educational Intervention Plan and remains fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

8. The stay of suspension referenced in this Consent Order shall remain in effect for so long thereafter as Dr. Shiffler complies with the terms of this Consent Order, and provided further that Dr. Shiffler also completes the Board approved Educational Intervention Plan through CPEP, and provides documentation regarding completion of the same to the Board.

9. Upon full compliance by Dr. Shiffler of the Educational Intervention Plan, as determined by the Complaint Committee of the Board, the Committee may recommend that the Board **DISSOLVE** the **SUSPENSION** provided for herein.

10. As long as this Amended Consent Order is in effect, Dr. Shiffler shall continue to receive continued and regular treatment and monitoring by a Board approved psychiatrist who shall report in writing to the Board every sixty (60) days

regarding Dr. Shiffler's ability and fitness to practice medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

11. Within six (6) months following the entry of this Amended Consent Order, if the Complaint Committee of the Board determines, in its sole discretion, that Dr. Shiffler has failed, without good cause, to arrange or participate in the CPEP Educational Intervention Plan described herein, or if he otherwise violates any term or condition of this Amended Consent Order, the Complaint Committee of the Board reserves its right to recommend that the Board immediately **LIFT** the **STAY** of **SUSPENSION** for the remainder of the term thereof, which the Board may do without further hearing or process.

12. At the end of May 22, 2009, if the Complaint Committee of the Board determines, in its sole discretion, that Dr. Shiffler has not made a good faith effort to comply with the terms and conditions of this Amended Consent Order, then the Complaint Committee of the Board may recommend that the Board **REVOKE** the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, which the Board may do without further hearing or process.

The foregoing Amended Consent Order was entered this 25th day of February, 2008.

WEST VIRGINIA BOARD OF MEDICINE

John G Wade MD

John A. Wade, Jr., M.D.
President

Catherine C Slemp, MD, MPH

Catherine Slemp, M.D., M.P.H.
Secretary

Joel D Shiffler MD

Joel D. Shiffler, M.D.
Date: 2-14-08

STATE OF WV

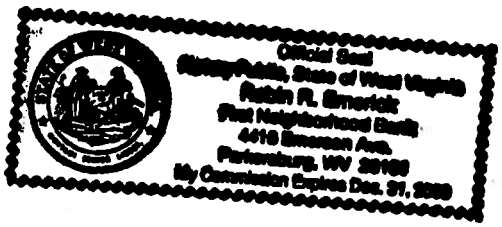
COUNTY OF Wood

I, Robin Emerick, a Notary Public in and for said county and state, do hereby certify that Joel D. Shiffler, M.D., whose name is signed on the previous page, has this day acknowledged the same before me.

Given under my hand this 14 day of FEB., 2008.

My commission expires 12/31/09.

Robin Emerick Notary Public



BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

FILE COPY

IN RE: JOEL DAVID SHIFFLER, M.D.

CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Joel D. Shiffler, M.D. ("Dr. Shiffler") freely and voluntarily enter into the following Consent Order pursuant to the provisions of W. Va. Code § 30-3-14, et seq.

FINDINGS OF FACT

1. Dr. Shiffler currently holds a license to practice medicine and surgery in the State of West Virginia, License No. 20094, issued originally in 1999. Dr. Shiffler's address of record is in Parkersburg, West Virginia.

2. On December 12, 2005, the Board received a complaint from Sheila Leggett ("Complainant"), caretaker for William H. Boyce, alleging, among other things, that Dr. Shiffler had engaged in unprofessional conduct by the fact that his patient, Mr. Boyce, waited for an extended time before being examined for treatment. The Complainant also alleged that Dr. Shiffler's office staff requested payment of a past due balance along with a Medicare co-pay. Mr. Boyce was upset about having to make that payment.

3. By correspondence received on January 26, 2006, Dr. Shiffler denied any inappropriate treatment with respect to Mr. Boyce.

4. The Complaint Committee of the Board conducted an investigation of the Leggett matter, and on April 6, 2006, obtained the medical records of Mr. Boyce from Dr. Shiffler.

5. The Complaint Committee's investigation identified several potential violations of the West Virginia Medical Practice Act and the Rules of the Board, including information that Dr. Shiffler had prescribed controlled substances to himself on several occasions between April 29, 2004, and October 24, 2005.

6. On January 3, 2006, the Board received a complaint from Sherri L. Bartimus ("Complainant") alleging, among other things, that Dr. Shiffler had engaged in unprofessional conduct by failing to process paperwork required for the Complainant to receive Prescription Drug Relief assistance through various pharmaceutical companies, and by further failing to produce copies of her medical records in a timely fashion ("Complaint").

7. By correspondence received on January 26, 2006, Dr. Shiffler attempted to explain why his office had not processed the paperwork required for the Complainant to receive Prescription Drug Relief in a timely fashion.

8. The Complaint Committee of the Board conducted an investigation regarding the Bartimus Complaint, and obtained pertinent medical records on March 22, 2006.

9. The medical records indicate that the Complainant was seen by Dr. Shiffler on September 28, 2005, and further include a formal request on behalf of Complainant for Prescription Drug Relief dated October 10, 2005. Although Dr. Shiffler signed some of the paperwork on November 29, 2005, there is no indication that it was ever processed by his office, nor did the patient sign those papers when requested.

10. According to the Complainant, the paperwork required for her to receive Prescription Drug Relief was never processed by Dr. Shiffler's office, and she ultimately had to find another physician to process the paperwork. In addition, she never received copies of her medical records.

11. On May 7, 2006, Dr. Shiffler appeared before the Complaint Committee of the Board for a full discussion regarding the Leggett and Bartimus matters and the results of the Complaint Committee's investigation.

12. On May 8, 2006, the Complaint Committee initiated an additional complaint against Dr. Shiffler, based upon the information that Dr. Shiffler had prescribed controlled substances to himself on several occasions.

13. On May 10, 2006, the Complaint Committee issued additional subpoenas to Camden-Clark Memorial Hospital and St. Joseph's Hospital, in Parkersburg, West Virginia, to obtain Dr. Shiffler's peer review and personnel files.

14. On June 16, 2006, Dr. Shiffler submitted his response to the initiated complaint, wherein he conceded that he had prescribed controlled substances to himself on several occasions. However, he stated that he was no longer taking any controlled substances, and had not engaged in any self-prescription of controlled substances since October 2005. Further, he provided clarification that the controlled substances had also been prescribed by his treating physicians for known legitimate medical problems.

15. The Complaint Committee expanded its investigation to include several interviews of former members of Dr. Shiffler's office staff. The interviews revealed additional instances of conduct on the part of Dr. Shiffler, resulting in concerns by the Complaint Committee regarding Dr. Shiffler's professional demeanor and attitude.

16. On July 9, 2006, the Complaint Committee referred Dr. Shiffler for a complete mental and physical examination by Robert M. Wettstein, M.D. ("Dr. Wettstein"), pursuant to the provisions of W. Va. Code § 30-3-14(f). Dr. Shiffler voluntarily submitted to said examination.

17. On February 1, 2007, Dr. Wettstein produced a report regarding his examination of Dr. Shiffler, wherein he concluded that, Dr. Shiffler is currently able to practice family medicine with reasonable skill and safety to patients from a psychiatric perspective, and he found no major mental disorder or substance abuse disorder which would substantially impair his ability to practice. Dr. Wettstein also conducted telephone interviews of former office employees of Dr. Shiffler and noted that not all observers noted behavioral, or quality of care problems at the office. Dr. Wettstein, however, noted that there are some issues with respect to Dr. Shiffler's personality and professional judgment, which should be addressed. Specifically, Dr. Wettstein indicated that Dr. Shiffler needs continued and regular treatment and monitoring by a psychiatrist to manage his anxiety disorder and personality issues, but not as a condition of his fitness to practice medicine. Finally, Dr. Wettstein concluded that a formal assessment of Dr. Shiffler's diagnostic and treatment skills may be useful.

18. Dr. Shiffler has a history of contact with mental health professionals resulting in sporadic psychiatric treatment and care.

19. The Board has reviewed the matters in question and has determined that the continued practice of medicine by Dr. Shiffler in the State of West Virginia, absent compliance with this Consent Order, could adversely affect the health and welfare of patients.

CONCLUSIONS OF LAW

1. The Board has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. W. Va. Code § 30-3-1.

2. Probable cause exists to substantiate charges against Dr. Shiffler pursuant to W. Va. Code § 30-3-14(c)(17), 11 CSR 1A 12.1 (e), (j), (w) and (x), and 11 CSR 1A 12.2(a)(C) and 12.2 (d), relating to unprofessional conduct, prescribing controlled substances for his own medical condition, and failing to conform to the principles of the American Medical Association, including opinion 8.19 regarding self-treatment.

3. To permit Dr. Shiffler to continue to engage in the practice of medicine without appropriate action by the Board might not result in a professional environment that encourages the delivery of quality medical services within the state as required by W. Va. Code § 30-3-2.

4. The Board has determined that it is appropriate and in the public interest to waive the commencement of proceedings against Dr. Shiffler and to proceed without the filing of formal charges in a Complaint and Notice of Hearing, provided Dr. Shiffler enters into this Consent Order.

CONSENT

Joel D. Shiffler, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Order provided for and stated herein, and the proceedings conducted in accordance with this Order, to the following:

1. Dr. Shiffler acknowledges that he is fully aware that, without his consent here given, no permanent legal action may be taken against him except after a hearing held in accordance with W. Va. Code § 30-3-14(h) and § 29A-5-1, et seq.

2. Dr. Shiffler further acknowledges that he has the following rights, among others: the right to a formal hearing before the Board, the right to reasonable notice of said hearing, the right to be represented by counsel at his own expense, and the right to cross-examine witnesses against him.

3. Dr. Shiffler waives all rights to such a hearing.

4. Dr. Shiffler consents to the entry of this Order relative to his practice of medicine and surgery in the State of West Virginia.

5. Dr. Shiffler understands that this Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the Consent of Dr. Shiffler, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. Effective upon the entry of this Order, the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, License No. 20094, is hereby **SUSPENDED** for a period of eighteen (18) months following the entry of this Order, unless earlier dissolved as described in more detail below, and the suspension is **STAYED** immediately, and Dr. Shiffler can continue to

practice medicine without restriction, pending his compliance with the terms and conditions set forth in this Order.

2. Within six (6) months following the entry of this Order, Dr. Shiffler shall attend the Colorado Personalized Education for Physicians ("CPEP"), at his own expense, for a comprehensive assessment of his skills as a physician, and any CPEP assessment report shall be sent directly to the offices of the Board to be provided to the Complaint Committee of the Board for review.

3. Upon receipt of any CPEP assessment report concerning Dr. Shiffler, the Complaint Committee of the Board shall immediately provide a copy of the same to Dr. Shiffler, and shall schedule an appearance by Dr. Shiffler before the Complaint Committee during its next regular meeting to discuss the contents and conclusions of the CPEP assessment report.

4. After meeting with Dr. Shiffler regarding any CPEP assessment report, the Complaint Committee of the Board may, in its sole discretion, recommend appropriate additional conditions, accommodations, limitations or restrictions, which it deems necessary to ensure that Dr. Shiffler remains fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

5. If the Complaint Committee of the Board, after meeting with Dr. Shiffler regarding any CPEP assessment report, recommends any additional conditions, accommodations, limitations or restrictions with respect to the practice of medicine by Dr. Shiffler, then the Complaint Committee of the Board may, upon Dr. Shiffler's agreement to comply with any such recommended conditions, accommodations, limitations or restrictions, recommend that the Board **DISSOLVE** the **SUSPENSION** provided for

herein, subject to the additional terms and conditions set forth in an appropriate Amended Consent Order.

6. If the Complaint Committee of the Board, after meeting with Dr. Shiffler regarding any CPEP assessment report, determines that no further conditions, accommodations, limitations or restrictions with respect to the practice of medicine by Dr. Shiffler are warranted, then the **SUSPENSION** provided for herein will be automatically **DISSOLVED** thirty (30) days following any such meeting.

7. As long as this Order or any Amended Consent Order is in effect, Dr. Shiffler shall also receive continued and regular treatment and monitoring by a Board-approved mental health practitioner who shall report in writing to the Board every sixty (60) days regarding Dr. Shiffler's ability and fitness to practice medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients. Such reports shall begin sixty (60) days from the entry of this Consent Order.

8. Within six (6) months following the entry of this Order, if the Complaint Committee of the Board determines, in its sole discretion, that Dr. Shiffler has failed, without good cause, to attend the CPEP assessment described herein, or if he otherwise violates any term or condition of this Order, the Complaint Committee of the Board reserves its right to recommend that the Board immediately **LIFT** the **STAY** of **SUSPENSION** for the remainder of the term thereof, which the Board may do without further hearing or process.

9. At the end of the one (1) year period following the entry of this Order, if the Complaint Committee of the Board determines, in its sole discretion, that Dr. Shiffler has not made a good faith effort to comply with the terms and conditions of this Order, then the Complaint Committee of the Board may recommend that the Board

REVOKE the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, which the Board may do without further hearing or process.

10. Dr. Shiffler is also **PUBLICLY REPRIMANDED** for unprofessional conduct, prescribing controlled substances for his own medical condition, and failing to conform to the principles of the American Medical Association, including opinion 8.19 regarding self-treatment.

The foregoing Order was entered this 22nd day of May, 2007.

WEST VIRGINIA BOARD OF MEDICINE

John A. Wade, Jr., M.D.
President

Catherine Slemp, M.D., M.P.H.
Secretary

Joel D. Shiffler, M.D.

Date: 5-11-2007

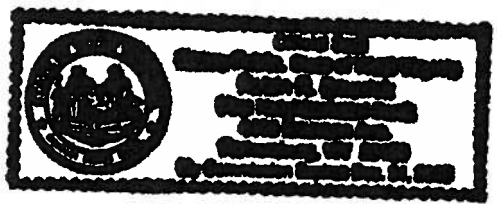
STATE OF WV

COUNTY OF Wood

I, Robin Emmick, a Notary Public in and for said county and state, do hereby certify that Joel D. Shiffler, M.D., whose name is signed on the previous page, has this day acknowledged the same before me.

Given under my hand this 11 day of May, 2007.

My commission expires 12/31/09.



Robin Emmick
Notary Public

CPEP
Center for *Personalized*
Education for Physicians

September 6, 2007

Joel D. Shiffler, M.D.
P.O. Box 4346
Parkersburg, WV 26104

Dear Dr. Shiffler:

Enclosed is your final CPEP Assessment Report. We reviewed your comments in detail and have appended them to the full Report.

CPEP would like to note that the comments about potential health issues were not meant to be inflammatory in any way, but rather were vague to protect the confidentiality of the specifics of your medical information.

Per your release, one (1) copy of the report has been forwarded to the West Virginia Board of Medicine.

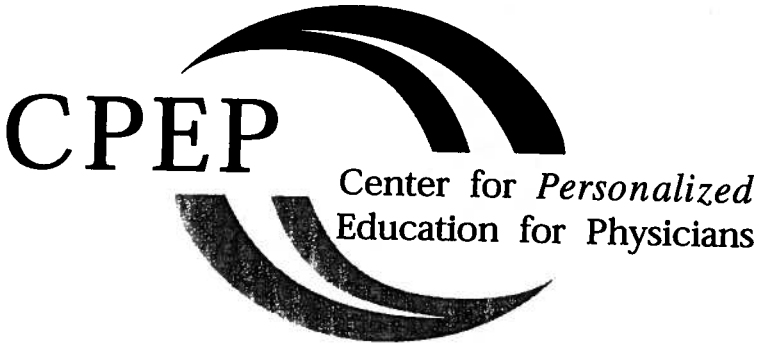
Thank you for participating in our program. Feel free to contact CPEP if we can be of further assistance.

Sincerely,

Christopher Leo
Assistant Case Coordinator, Assessment Services

Enclosure

cc: West Virginia Board of Medicine



ASSESSMENT REPORT

For

Joel D. Shiffler, M.D.

June 28 – 29, 2007

A National Leader for Evaluating and Enhancing Physician Performance

7351 Lowry Boulevard, Suite 100
Denver, Colorado 80230
Phone: 303-577-3232
Fax: 303-577-3241
www.cpepdoc.org

I. The CPEP Assessment Process

CPEP, the Center for Personalized Education for Physicians, designed this Assessment for Joel D. Shiffler, M.D. The Assessment reflects Dr. Shiffler's training and practice in family medicine. It included three (3) clinical interviews based on patient charts that Dr. Shiffler submitted from his practice as well as hypothetical case discussions, and a written examination in electrocardiogram (ECG) interpretation. Simulated Patients represented clinical cases typically seen in a family medicine practice.

CPEP selected the charts that Dr. Shiffler submitted for this Assessment. The charts were identified from Dr. Shiffler's April 2007 outpatient schedule. CPEP selected 34 of the 122 patients recorded (i.e., approximately 30%) and these charts were chosen to represent a variety of diagnoses and conditions.

Note: CPEP's Assessment is intended to provide an evaluation of Dr. Shiffler's clinical abilities in family medicine. The Assessment is not designed to provide an evaluation of behavioral issues or of the consequences of physical or mental health disorders.

The table below outlines the test modalities used in Dr. Shiffler's Assessment and how each modality contributed to the Assessment.

	Areas Evaluated				
Test Modality	Medical Knowledge	Clinical Reasoning	Application of Knowledge to Practice	Documentation	Communication
Three Clinical Interviews – Family Medicine	◆	◆	◆	◆	◆
Review of Patient Charts	◆	◆	◆	◆	
ECG Interpretation	◆				
Physician-Patient Communication Evaluation					◆
Simulated Patient Chart Note Analysis				◆	

Additional Assessment Components

- Review of:
  - Education, Training and Professional Activities
  - Practice Profile
  - Referral Source Information
- Health Information Review
- Cognitive Function Screen
- Observations of Participant Behavior

II. Participant Background

A. Review of Education, Training, Professional Activities, and Practice Profile

CPEP obtained this information from conversations with and documents provided by Dr. Shiffler.

Education

School	Degree	Years Attended
University of Toledo, Ohio	B.A.	1980 – 1984
Ross University, Dominica, West Indies[1]	M.D.	1984 – 1986
		1992 – 1994

[1] Break in schooling 1986 – 1992

Post-Graduate / Residency Training

Specialty/Institution	Dates Attended
Family Medicine residency, Grace Hospital, Detroit Medical Center, Detroit, Michigan	1994 – 1997

Certifications

Certifying Body	Year	Certification Period
American Board of Family Practice (not current)	1997	7 years

Licensure

Licensing State(s)	Status
Florida	Inactive
Michigan	Inactive
West Virginia	Active w/ Stipulations

Practice History

Years/Description/Location

2007 – Present: Solo Family Practice, Good Shepherd First, Parkersburg, WV
2002 – 2007: Solo family practice, Family Health Care, Parkersburg, WV
2001 – 2002: Solo family practice, Family Health First, Parkersburg, WV
1999 – 2001: Solo family practice, Emerson Medical Center, Parkersburg, WV
1999 – 1999: Group family practice, Internal Medical Center, Hudson, FL
1998 – 1999: Solo family practice, Family Urgent Care, Apopka, FL
1997 – 1998: General practitioner in outpatient solo practice, Family Medicine Center, Mt. Dora, FL
1997 – 1997: Family practice/Chiropractor, Physician Plus, St. Petersburg, FL

Active Hospital Privileges

None

Practice Profile

Dr. Shiffler works five (5) days per week, sees 30 patients per day in the office, and is on-call 30 days per month.

Commonly Encountered Diagnoses

Neuropathy, radiculopathy, muscle spasms, depression, anxiety, post-traumatic stress, hypertension, hyperlipidemia, failed back surgery syndrome, obesity, spinal canal stenosis, diabetes mellitus

Outpatient Procedures (monthly volume)

Trigger point injections (500 – 1000), electrocardiogram (20), breathing treatments (10)

Continuing Education

Dr. Shiffler reported earning a total of 77.25 hours of CME credit between 2004 and 2007.

B. Reasons for Assessment

The CPEP Medical Director and staff reviewed information that the West Virginia Board of Medicine (Board) and Dr. Shiffler provided prior to the Assessment. On May 22, 2007, a Consent Order was filed mandating Dr. Shiffler to undergo a CPEP Assessment. Through this Assessment, Dr. Shiffler hopes to improve any demonstrated areas of need.

III. Evaluation Components

A. Clinical Interviews

Clinical Interview #1

The consultant is a board-certified family physician in practice in a large metropolitan area. The consultant reviewed 12 of Dr. Shiffler's charts prior to the interview and based the discussion on these cases as well as hypothetical case scenarios.

General Chart-based Comments:

- The consultant found lack of indications and justification for medications prescribed;
- One chart did not state the reason for a trigger point injection;
- Based on the records, there was no indication that Dr. Shiffler provided informed consent to his patients prior to trigger point injection;
- The consultant was concerned about the degree of documentation that was provided by staff, rather than Dr. Shiffler;

- Notes included minimal physical exam data, and many did not include patient weights, especially concerning, since Dr. Shiffler saw many patients to discuss weight management;
- Of the 12 records that this consultant reviewed, 11 patients were prescribed a narcotic, and nine patients were prescribed a benzodiazepine (overlap of eight patients, i.e., eight patients were prescribed both a narcotic and a benzodiazepine).

Topic-based Discussion

New patient information and preventive health:

- When asked to provide an explanation of the difference between an assessment of a new patient and an established patient, Dr. Shiffler appeared to have difficulty grasping the consultant's question;
- Did not appear to understand the concept of health preventive measures;
- During this discussion, stated that he sees 30 to 40 patients per day;
- With direct questioning about the information that Dr. Shiffler would want to gather at an initial visit:
  - Stated he would ask about past surgeries, medications, and drug allergies;
  - Would ask about tobacco and marijuana use; did not mention alcohol or other illicit substances;
  - Would initiate problem and medication lists;
- When the consultant asked about preventive exams, Dr. Shiffler:
  - Stated that he sees mostly walk-in patients and patients for pain management;
  - Stated that, if a patient were to present for a periodic health exam, he would ask for the reason the patient presented, and ask if the patient were healthy; "If they perceive themselves as healthy, I would proceed to a physical exam";
  - Was not knowledgeable about the components of an annual exam;
- When asked about preventive screening tests, Dr. Shiffler:
  - Stated that he would check lipid levels, a complete metabolic panel (CMP), and a thyroid stimulating hormone (TSH) level;
  - Would consider a chest x-ray (CXR) if the patient smoked; the consultant commented that this would be acceptable, as the US Preventive Services Task Force position is that there is inadequate evidence for or against such screening;
  - For patients over 50 years old:
    - Would order a prostate specific antigen (PSA), which would also be acceptable, though he did not mention any controversies surrounding this test;
    - Would order fecal occult blood testing and a baseline colonoscopy, which would be appropriate:
      - Described incorrect interval for follow up after negative colonoscopy;
- Stated that Pap smears should begin when the patient initiates sexual activity and continued annually for the duration of the patient's life:
  - Although current recommendations are to initiate Pap smears three years after initiation of sexual activity, the consultant found Dr. Shiffler's recommendation reasonably close and safe;

  - Dr. Shiffler's other recommendations did not reflect current guidelines, which differ for different patient situations;
  - Dr. Shiffler informed the consultant that he did not do Pap smears;
- Would recommend an initial mammogram at age 38 with annual follow ups, which again, is not precisely consistent with the recommendations of any particular agency, but was reasonably close and safe;
- During this discussion, Dr. Shiffler initiated an unfocused monologue regarding use of anxiolytics, gastroesophageal reflux disease, "vinegar diet", positive thinking and trigger point injections:
  - It was not feasible to follow Dr. Shiffler's line of thought to understand how these topics were related to the content of the initial discussion or to each other;
- In summary, the consultant found that Dr. Shiffler's knowledge of preventive health maintenance guidelines was incomplete, and he did not appear to prioritize this concept for his actual patients.

Topic-based Discussion
Preventive health and monitoring of diabetics:

- Mentioned that diabetic patients should have an annual eye exam, foot exams (though he did not specify the frequency), a hemoglobin A1c (Hgb A1c) every three months, and liver function tests (LFTs) every three months if on lipid lowering medications; the consultant generally agreed;
- Required prompting to mention urine testing for microalbuminuria;
- Failed to mention screening for diabetic neuropathy with monofilament testing;
- Would educate patients regarding foot care and recommend "diabetic education";
- The consultant opined that this listing was largely appropriate.

Hypothetical Case Discussion
50 year-old female with chest pain presenting to the office:

- Dr. Shiffler's discussion of the evaluation of chest pain lacked organization;
- After hearing the above brief history, Dr. Shiffler listed appropriate questions about nausea, vomiting, radiation, and diaphoresis;
- Then immediately stated that he would obtain an electrocardiogram (ECG):
  - If any ECG changes were seen, he would administer an aspirin and call 911 for ambulance transport of the patient to the emergency room;
- When asked how he would proceed if the history were subtle, or less clear than he presumed in the aforementioned case, Dr. Shiffler proceeded on a discussion that was not clearly related to the case at hand:
  - Eventually provided a brief but appropriate list of alternative potential diagnoses for chest pain;
  - Was unable to describe how he would try to discern acute and potentially dangerous chest pain from other causes in the office;
  - The consultant considered Dr. Shiffler's fund of knowledge for chest pain lacking;

- Dr. Shiffler stated that lipoprotein-associated phospholipase A2 (PLAC) test is a serum test for heart disease and stated "some chemistry is going on" and that it can indicate when a plaque is going to rupture through the coronary epithelium, but the consultant disagreed:
  - The consultant opined that Dr. Shiffler's understanding of this test was confused and unclear;
- The consultant concluded that Dr. Shiffler did not have good understanding of the physiology of coronary artery disease and the mechanism of action of various medications.

Hypothetical Case Discussion
Congestive heart failure (CHF):

- Dr. Shiffler generally starts treatment for uncontrolled hypertension with an angiotensin receptor blocker (ARB), which the consultant commented would not be consistent with the Seventh Report of the Joint National Committee (JNC-7);
- Stated that he prescribed clonidine for uncontrolled hypertension in the past, but correctly stated that depression was a major side effect of this drug;
- Mentioned Zaroxolyn as his diuretic of choice when asked about medications for CHF; however, the consultant commented that loop diuretics are generally considered first;
- Would order a B-type natriuretic peptide (BNP), CXR, ECG, CMP, and TSH, all of which would be acceptable;
- Stated that patients with heart failure would generally be discharged from the hospital on an angiotensin converting enzyme (ACE) inhibitor, Lasix, aspirin, and/or Plavix;
- The consultant did not believe that Dr. Shiffler understood the components of maximal treatment for CHF.

Hypothetical Case Discussion
Elderly patient with joint pain:

- Dr. Shiffler stated that he would order analgesics and a bone density study:
  - The consultant opined that this would not constitute an adequate evaluation for the symptoms described;
- When the consultant presented a more specific scenario of a patient, seen for the first time, with bilateral knee pain, with one knee with more severe symptoms, Dr. Shiffler:
  - Stated that he would encourage fewer potatoes and tomatoes, and encourage increased intake of cherries and blueberries;
  - If requiring pain medication of "more than 3 times per day," would refer to a pain specialist;
  - Would try benzodiazepines, which the consultant did not believe would be appropriate for symptoms of arthritis:
    - The consultant was concerned that Dr. Shiffler listed Xanax as a good medication for pain;
    - Dr. Shiffler stated that he uses Xanax for patients with chronic pain to help calm them down;

- Did not provide other suggestions for the treatment of potential osteoarthritis:
  - Did not mention weight loss and range of motion exercises, which are important in the treatment of osteoarthritis;
- Presented with another related scenario, a younger patient with hot, swollen joints, Dr. Shiffler:
  - Change bullets for below;
  - Stated that he does not tap effusions;
  - Provided an unfocused list of interventions that he would consider, including initiating an antibiotic and referring the patient to an orthopedic specialist, performing an exam, and "ruling out gout";
  - When prompted to consider blood work, stated that he would order a complete blood count (CBC), sedimentation rate, uric acid, TSH, and x-rays.

Topic-based Discussion
Trigger Point Injections:

- The consultant inquired about the dose of medications that he typically used in trigger point injections, and Dr. Shiffler:
  - Stated that his nurses draw up the medications (Depo Medrol, lidocaine, and bicarbonate) and he was not certain of the dose;
  - Referred to "buvicaine" but the consultant thought that he probably meant bupivacaine;
- The consultant opined that Dr. Shiffler used medications, including medications for pain, without a clear understanding of the dosing or the correct name of the medication.

Hypothetical Case Discussion
Elderly female with reported memory loss, accompanied by her husband:

- Dr. Shiffler initially described appropriate questions that he would ask the husband, but his questioning was limited;
- Without suggesting any evaluation, stated that he would recommend treatment with Aricept or Gingko, consider an antidepressant, and make sure the patient was getting adequate sleep;
- If the patient needed something for sleep, would prescribe Xanax, and might add a tricyclic antidepressant or selective serotonin reuptake inhibitor;
- Required prompting to consider objective memory testing, such as the mini mental status exam;
- When asked if he would consider laboratory testing, he indicated that he would order thyroid, kidney, and liver testing; while these tests would be appropriate, there are additional tests that should be considered, according to the consultant;
- The consultant was concerned that Dr. Shiffler did not recommend a complete evaluation in this scenario; for example, he did not consider head imaging to evaluate for a cerebrovascular accident (CVA) or intracranial lesions.

Hypothetical Case Discussion
Patient with stroke versus transient ischemic attack (TIA):

- If symptoms were unresolved, Dr. Shiffler would refer the patient to the emergency room for a computed tomography (CT) scan to evaluate for possible CVA;
- If the patient presented a few days after the symptoms had occurred and resolved, would order an outpatient CT scan, ECG, D-dimer level, and international normalized ratio (INR); the consultant agreed with all except the D-dimer test, which she did not believe would be indicated;
- If the symptoms were resolved and the CT were normal, Dr. Shiffler:
  - Would consider starting Plavix and/or aspirin:
    - Recommends chromium and vitamin C in his practice to decrease associated bruising;
  - Would appropriately check the patient's medications to see if side effects could have caused any neurologic deficit;
  - Failed to recommend a carotid ultrasound or echocardiogram to assess for a source of clot.

Clinical Interview #2

The consultant is a board-certified family practitioner who teaches family medicine in an urban area, who also has extensive experience in physician assessment. She reviewed ten charts before the interview, and based the case discussions on two charts and hypothetical case scenarios.

General Chart-based comments:

- The consultant commented that the records did not include clear information about the patients or regarding Dr. Shiffler's medical reasoning;
- Found evidence of illogical and/or incomplete connections between patient complaints and physician actions;
- Of the ten records that this consultant reviewed, six patients were prescribed a narcotic, and nine patients were prescribed a benzodiazepine (overlap of five patients).

Chart-based Discussion (Dr. Shiffler's patient)
35 year-old female with headache:

- Dr. Shiffler's documented diagnoses of hypertension, anxiety, anemia, and restless leg syndrome did not match Dr. Shiffler's memory or treatment of his patient;
- Dr. Shiffler did not fully understand the mechanism of action for chosen medications;
- Described inadequate resources for finding out about medications:
  - Indicated that he uses sales representatives and commercial references for medication information;
- Provided a disorganized and incomplete differential diagnosis list for headache;
- Provided a similarly disorganized and incomplete differential diagnosis list for anemia;
- Jumped to conclusions and failed to demonstrate logical reasoning or suggestions for follow-up;

- Demonstrated poor and disorganized knowledge of basic mechanisms of disease when discussing pseudotumor cerebri;
- Demonstrated poor integration of knowledge;
- Was not knowledgeable about health maintenance guidelines for Pap Smears or mammograms;
- Was unable to read from his own patient care records to know what he had addressed;
- Demonstrated a gap between described understanding for the prescription and management of narcotic medications and actual patient management:
  - Described concerns about the abuse of medications but continued to prescribe narcotics, just in lesser amounts than the patient requested;
- Demonstrated knowledge of Requip doses and side effects;
- Stated willingness to consult with pharmacists;
- Demonstrated a practical approach by concentrating on patient symptoms and empiric trials of treatment;
- Demonstrated an awareness of how to conduct a history of present illness assessment via questions about location, intensity, duration, modifying factors, associated symptoms or findings;
- Stated willingness to refer to specialists and the emergency department;
- Provided a reasonable description of a seriously ill patient by appearance and vital signs;
- Articulated acceptable questions about psycho-social problems;
- Was aware that medications can cause headache;
- Used effective patient language metaphors for simple explanations of disease;
- Demonstrated knowledge of some resources for learning, including Merck Manual, Harrison's textbook, Washington Manual, Medscape, MD Consult, Internet search engine, commercial journals, consultants:
  - However, described unfocused scanning for information rather than a search for specific questions;
- Used controlled drug contracts;
- Demonstrated knowledge of urine drug screening, pill counts, and what to do if urine tested positive for illegal drugs.

Hypothetical Case Discussion
54 year-old female with a new onset headache:

- Dr, Shiffler listed some ideas about what CT scans might show for a patient with headache;
- Demonstrated some degree of flexibility when he added a consideration about vasculitis during case discussion;
- Demonstrated knowledge of anatomy;
- Demonstrated knowledge of clinical tests and treatment for carpal tunnel syndrome;
- Jumped to conclusions or anchored on inappropriate diagnoses:
  - Focused on sinus disease, depression, carpal tunnel syndrome;
- His proposed clinical questions were disorganized:
- Did not describe an organized neurological examination:

- Inappropriately proposed that if a patient's gait were normal, she would not need a neurological exam ("leave it alone");
- Provided a disorganized diagnostic plan;
- Did not demonstrate the ability to link problems of a headache of recent onset and a partially numb and clumsy left hand to a possible right-sided brain tumor;
- Revealed accurate but limited knowledge of Chiari malformation and carpel tunnel syndrome suggesting that he knew about the conditions but applied the information too broadly.

Chart-based Discussion (Dr. Shiffler's patient)
47 year-old male seen for follow-up after a hospitalization for a heart attack:

- Dr. Shiffler did not pursue the reason for this patient's chronic elevation of creatine kinase (CK), and it was not clear if he had ever realized that the levels were elevated:
  - When asked, was not able to propose any potential reasons for this lab abnormality;
  - Demonstrated simple knowledge of kinase enzymes from multiple tissues and the myocardial fraction or band (CKMB);
- From the patient's record, it appeared that Dr. Shiffler dismissed the medical assistant's notes about pallor and other complaints:
  - Indicated that this was due to knowledge of the patient and concern that the patient's complaints were not legitimate;
  - It was unclear if Dr. Shiffler knew whether this patient had coronary artery disease or ongoing angina;
- Did not demonstrate the ability to prioritize patient issues such as risk of death, myocardial infarction (MI), and stroke;
- It was unclear if Dr. Shiffler addressed this patient's ability to function at home:
  - Demonstrated good recall of this patient and his social situation;
- Voiced concern about patient adherence to medication, lifestyle modification, and patient comfort.

Hypothetical Case Discussion
65 year-old male with acute chest pain:

- Dr. Shiffler provided a reasonable but disorganized differential diagnosis list;
- Employed a simple approach to questions about patient symptoms;
- On recognizing the acuity of the situation, described a rapid plan for an ECG and a call to emergency medical technicians;
- Demonstrated the ability to recognize that a unilateral absence of breath sounds might mean a collapsed lung;
- Was slow to recognize the description of an emergency case;
- Did not list ideas about how to treat tension pneumothorax, even with patient cyanosis.

Hypothetical Case Discussion
12 year-old female with abdominal pain:

- Dr. Shiffler asked acceptable questions about patient symptoms;

- Demonstrated knowledge of ranitidine as a potential treatment for gastritis;
- Demonstrated the ability to shift ideas with case change from weeks of pain to a new onset of pain;
- Stated a willingness to send an uncomfortable patient to the emergency department for an evaluation;
- Demonstrated knowledge of the implications of an elevated white blood cell count, psoas sign, and rebound as clues of appendicitis;
- Demonstrated a knowledge of leukocytosis and infection that was simplistic;
- Verbalized assumptions: "so it's the right lower quadrant?";
- Was not able to explain his thought processes;
- Listed a limited differential diagnosis of pancreatitis, ovarian cyst, appendicitis, gastritis;
- Stated inappropriate and impractical ideas about screening children for cholesterol, thyroid, electrolytes, and H. pylori;
- Provided an unclear link between the abdominal pain discussion and his assessment of hydration status;
- Demonstrated poor knowledge of the radiological diagnosis of acute abdominal pain.

Clinical Interview #3

The consultant is a board-certified family physician in practice in a large metropolitan area. The consultant reviewed 12 of Dr. Shiffler's charts prior to the interview and based the discussion on these cases as well as hypothetical case scenarios.

General Chart-based Comments

- Charts were largely illegible with the exception of the nurses notes;
- Reasons for office visits were unclear;
- Information in the charts was minimal;
- Of the 12 records that this consultant reviewed, nine patients were prescribed a narcotic, and seven patients were prescribed a benzodiazepine (overlap of six patients).

Hypothetical Case Discussion

An obese, 57 year-old male with increased urination and fatigue:

- Dr. Shiffler appropriately would evaluate for anemia, thyroid disorders, diabetes and obstructive sleep apnea;
- Would appropriately ask about other symptoms such as headache and increased thirst, hunger, weight gain, and weight loss;
- Would include laboratory tests in his evaluation:
  - Electrolytes, basic metabolic panel, thyroid studies, urine (to rule out nephritis, infection, prostate issues, kidney stones);
- When asked about blood in the urine, Dr. Shiffler mentioned all of the appropriate considerations except for cancer;
- When told that all of the laboratory tests were normal, other than a random glucose of 152 mg/dl and mild glucosuria:
  - Dr. Shiffler would consider the patient to have diabetes:

        - The consultant noted that the glucose value given should have prompted a repeat fasting glucose by current criteria rather than an immediate diagnosis;
    - Dr. Shiffler did not demonstrate knowledge of the current diagnostic criteria for diabetes:
        - Would base his diagnosis on a hemoglobin A1c of six or more;
        - Stated that he checks insulin levels on some patients.

Topic-based Discussion
Treatment of a new diabetic patient:

- Dr. Shiffler appropriately mentioned that he would send the patient for diabetic education including topics such as stress, exercise, and weight loss;
- Metformin:
    - Would start the patient on Metformin at 500 mg twice a day, which is the recommended starting dose;
    - Knew that Metformin causes diarrhea and some gastrointestinal (GI) upset;
    - Correctly knew that Metformin is contraindicated with renal failure but did not have any specific criteria such as a creatinine level;
- Would follow up with a repeat hemoglobin A1c at three months and again in six months;
- If a repeat hemoglobin A1c were unchanged:
    - Stated that options would include an increase in Metformin, but he does not usually increase Metformin:
        - The consultant noted that many patients will require 1500 mg per day for a therapeutic benefit;
    - Knew maximum doses of Metformin;
    - Typically would prefer to add another medication, such as Actos;
- Actos:
    - Did not know the mechanism of action;
    - Knew that the mechanism of action was similar to Avandia but that "Avandia was bad and Actos was okay";
    - Knew that it was contraindicated in CHF;
    - Did not know that liver tests would be important;
    - When asked to describe his explanation of how the medication works to his patients, he stated that patients do not usually ask;
- Sulfonylureas:
    - When asked about other medications for diabetes, correctly stated that Amaryl is a sulfonylurea;
    - Did not know about glyburide or other more basic and generic sulfonylureas;
    - Did not demonstrate complete knowledge of dosing;
    - Said Byetta was like Lantus, implying that it was a type of insulin, which the consultant noted was incorrect;
- Prandin: was incorrect regarding the mechanism of action;
- Insulin:

  - When asked about the use of insulin, Dr. Shiffler stated he sends patients who need to start insulin to a dietitian or for diabetic education at the hospital;
  - Would begin the use of regular insulin twice a day on a sliding scale;
  - Demonstrated incomplete knowledge about NPH insulin:
    - Did not know the difference between NPH and regular insulin;
    - Mentioned that he sometimes uses insulin 75/25 or 70/30, which he would start at 10 units twice daily and adjust from there;
  - Would have patients check blood sugars to get more information;
- When asked about lipid management for diabetics:
  - Stated that the goal for total cholesterol would be 150;
  - Stated the correct goal for triglycerides;
  - Stated that the goal for low-density lipoprotein (LDL) would be under 100, which would be acceptable according to NCEP (National Cholesterol Education Program) guidelines, but the consultant noted that many physicians would choose to treat to a goal of less than 70 for this patient;
  - Stated an appropriate high density lipoprotein (HDL) goal;
  - Would start the patient on Vytorin or Lipitor:
    - Knew the appropriate dosage but would not prescribe doses higher than about 40 mg of Vytorin or Lipitor;
    - Would appropriately check liver tests every three months;
  - Was familiar with Niacin;
  - Did not discuss fish oil to raise HDL;
  - Listed side effects of statins including liver problems and rhabdomyolysis;
- Would appropriately routinely check the patient's eyes for diabetic retinopathy;
- Would periodically check feet for sores and ulcers.

Hypothetical Case Discussion

36 year-old female with fever, chills, urinary pain, flank pain, a temperature of 101°F, and pulse of 110:

- Dr. Shiffler would want a pregnancy test and a urinalysis (UA);
- If the UA result were positive for nitrites, leukocyte esterase, and 25-35 white blood cells (WBCs), would send the patient to the emergency room (ER) for intravenous (IV) antibiotics, which the consultant did not believe mandatory, based on the information provided:
  - When asked why he would send the patient to the ER instead of seeing her as an outpatient, stated that she seemed too sick, but did not list currently recognized criteria such as nausea, vomiting, or intolerance to medication;
- If the patient were less ill with no fever, nausea, or vomiting and 10 to 20 WBCs in her urine, would treat for E. coli with Augmentin, Levaquin, Bactrim, or Macrodantin;
- When asked about medications for pseudomonas:
  - Would use Cipro, which the consultant noted would be appropriate in most cases.

Hypothetical Case Discussion
42 year-old male who was complaining of fatigue and whose wife noticed pallor:

- Dr. Shiffler would appropriately ask about chest pain and shortness of breath;
- Would rule out cardiac disease and specifically, an acute MI;
- When given the results of a CBC that showed WBCs of 5.0, hemoglobin of 11, hematocrit of 32, platelets of 300 and a mean corpuscular volume (MCV) of 74:
  - Dr. Shiffler knew that the cells were small and likely related to iron deficiency;
  - Would check iron and ferritin levels;
- If the MCV were 110:
  - Would consider folic acid and vitamin B12 deficiencies;
- Returning to the low MCV case, would ask about menses in female patients but in this case, he would also check fecal occult blood test:
  - If the fecal blood test showed that one in three were positive, stated the patient would need a colonoscopy, which would be correct;
  - Would treat the patient and if he got better, would consider a colonoscopy later, which the consultant commented might result in a missed diagnosis of a colon cancer with intermittent bleeding;
  - Would use oral iron therapy;
  - Was not familiar with IV iron therapy as an alternative for those who fail oral therapy or who cannot take oral iron.

Hypothetical Case Discussion
52 year-old male with recurrent episodes of low back pain that radiated to his left buttock, leg and foot:

- After asking the consultant a few appropriate questions about this patient's pain, such as history of injuries and duration of symptoms, and whether the patient had been previously evaluated, Dr. Shiffler stated that "this is real to me" and that he would likely prescribe pain medication, but also indicated that he would ask about a history of substance abuse;
- Dr. Shiffler would perform an exam including an evaluation of strength and straight leg raise:
  - Was incorrect about what would constitute a straight leg raise;
  - Did not demonstrate specific knowledge about how to differentiate levels of radiculopathy, such as a through sensory, motor, or deep tendon reflex examination;
  - Knew a few tests that would check for muscle weakness;
  - Incorrectly listed "Hoffman and Babinski" as deep tendon reflexes;
- Would request a plain film x-ray and an magnetic resonance image (MRI);
- If the x-ray and MRI were fairly normal with no indication of nerve root encroachment, but there were pain on palpation of areas of the bony spine:
  - Correctly named and appropriately explained spondylolisthesis;
  - Knew about some sacroiliac (SI) joint maneuvers;
  - Briefly mentioned facet-related pain;
  - When asked how he would manage patients with these problems, Dr. Shiffler listed: opiates; Vicodin or Percocet;

- When prompted, considered other management options, such as exercises, massage therapy, acupuncture, Medrol dose pack, trigger point injections, and muscle relaxants;
- Regarding muscle relaxants:
  - Volunteered that he did not know how these drugs worked;
  - Aware of abuse potential with Soma;
- Regarding trigger point injections:
  - Uses Depo Medrol, Marcaine, and sodium bicarbonate in his injections;

- The consultant again prompted Dr. Shiffler to consider alternative medications that he might use for the chronic pain patient:
  - Stated that he would use antiepileptic medications such as Tegretol, Dilantin, Neurontin, or Lyrica;
  - Also described a topical mix of compounded Elavil and Tegretol that he developed;
- When asked about long-acting pain medications such as OxyContin, MS Contin, and methadone:
  - Dr. Shiffler reported that he uses methadone for a limited number of patients but does not use OxyContin or MS Contin;
  - Would send patients to a pain management specialist if they needed OxyContin or MS Contin;
  - Acknowledged that some patients in his practice are on continuous Percocet;
  - Stated that all his patients on chronic narcotics have a signed narcotics contract;
    - Was able to describe several of the agreements in a contract, but did not describe the outcome of a broken contract;
    - Narcotic contracts were included in the patient charts reviewed;
  - Stated that he would not give more than three refills;
    - However, information in his charts suggested that he had many patients on continuous narcotics for what appeared to be more than a year.

B. Electrocardiogram Interpretation

Dr. Shiffler's responses to the ECG examination were considered within the context of his family medicine practice where he orders ECGs and has them selectively over read. His ECG machine does not provide electronic interpretations.

Task #1
Note the rate, intervals, and axis for one normal ECG:

- Dr. Shiffler correctly indicated that the QRS axis was normal, though he did not estimate the degree of axis;
- Was incorrect for ventricular rate, PR interval, QRS duration, and QT interval.

Task #2
Provide a description, interpretation, and course of action for nine ECG tracings representing various cardiac conditions:

- Descriptions:

- Described three tracings correctly;
- Was partially correct in three;
- Was incorrect in three;
- Dr. Shiffler's notes did not clearly show that he had a logical scheme to analyze ECGs;

- Interpretations:
  - Interpretations were correct in two tracings, partially correct in two, and wrong in five tracings;
  - Frequently over- or misinterpreted P and Q waves, ST segments, T waves and basic intervals;
  - Frequently failed to correctly identify the underlying rhythm:
    - Interpreted one tracing as heart block rather than atrial fibrillation;
  - Of the five tracings for which Dr. Shiffler needed to consider infarct or ischemia as the cause of the pattern, he identified two;
- Plans:
  - Plans were correct and thorough in response to one tracing, partially correct in three tracings, and incorrect in five tracings;
  - Plans were incorrect primarily as a result of incorrect interpretations;
  - Dr. Shiffler frequently indicated that he would refer patients to a cardiologist;
  - Did not provide sufficient detail regarding the evaluation of potential etiologies of sinus tachycardia;
  - Four patients might have been put at risk by Dr. Shiffler's plans:
    - Three for not entertaining acute ischemia/infarction;
    - One for misinterpretation of the underlying rhythm.

Summary
Overall, Dr. Shiffler's performance on the ECG interpretation test was inadequate.

C. Physician-Patient Communication Evaluation

The communication consultant assessed Dr. Shiffler's communication skills by observing his interactions with three simulated patients (SPs). The SPs presented with carpal tunnel syndrome, allergies, and high blood pressure.

Strengths
- Dr. Shiffler was perceived by the SPs as a good listener and as interested in helping the SPs;
- Appeared confident;
- Assured each SP that he could treat their conditions;
- Gave clear descriptions about how he would treat their conditions;
- Perceived when the SPs were nervous and addressed their concerns in a manner that was reassuring;

- Focused on immediate concerns and informed each SP about his plans for subsequent visits in order to obtain a more detailed picture of their overall health needs.

Weaknesses

- All of the SPs noticed poor eye contact during the initial part of their interviews, but noticed improvement as their interviews progressed;
- Two of the SPs would have liked a more detailed explanation about the procedures that Dr. Shiffler was going to order.

Consultant Observations

- Dr. Shiffler appeared open to feedback.

Summary:
Dr. Shiffler demonstrated adequate overall physician-patient communication skills.

D. Patient Care Documentation

Review of Documentation – Patient Charts
The consultants reviewed outpatient charts that were submitted by Dr. Shiffler.

Charts and Systems:

- Chart notes were handwritten in a template format;
- Problem lists were not present;
- Medication lists were present:
  - However, some medication flow sheets were not kept current;
- Lab reports were signed and dated;
- Flow sheets were not present;
- Narcotic drug contracts were present.

Patient Care Notes:

- Dr. Shiffler's handwriting was illegible;
- In general, the information in the notes was sparse and inadequate; major components of an adequate note were missing from several notes;
- The consultants found it difficult to discern why the patient was being seen;
- Physical exams lacked detail and many of the office notes did not include patient weights and ages;
- Notes lacked clear patient information or clear clinical reasoning;
- The records lacked documentation of indications for medications;
- Documentation of informed consent was missing from the records;
- One consultant was concerned that much of the documentation in the charts was written by an assistant or nurse;
- Another doctor would not be able to assume care of these patients based on chart documentation.

Summary
Overall, Dr. Shiffler demonstrated unacceptable documentation in these patient records.

Review of Documentation – Simulated Patient Encounter Progress Notes
Dr. Shiffler was asked to document a progress note for each Simulated Patient encounter (See Section III. C. above).

General Features
- Dr. Shiffler used a template format with handwritten entries;
- Handwriting was partially illegible.

Note Components
- History:
  - Dr. Shiffler consistently included a presenting complaint; history of present illness; past medical history, medications, allergies, and family history:
    - The histories of present illness were difficult to read, brief/telegraphically written, and difficult to follow;
  - Inconsistently included: weights (one of three), a presenting complaint (one of three); toxic exposures and review of systems (ROS);
  - Consistently omitted the vital signs that were provided;
- Objective: physical exams were consistently present;
  - Were difficult to read;
- Assessment: each record included one or more single-word diagnoses, without indication of differential diagnosis or discussion of status or clinical reasoning;
- Plan: plans were present for each note:
  - Prescription names were listed, and sometimes did not include directions, quantity, and # of refills; at other times it was too difficult to read what was written;
  - Some patient education was included;
  - Timing for follow up was included in two notes.

Summary
Overall, Dr. Shiffler's SP notes were not acceptable.

E. Cognitive Function Screen

Dr. Shiffler's overall results on the cognitive function screen were within normal limits. His area of greatest relative weakness was memory, where his scores were variable.

F. Review of Health Function

Dr. Shiffler submitted a copy of a neurological evaluation conducted in October 2006 and a follow up visit in November 2006. Review of this documentation indicated that Dr. Shiffler has a condition that could affect his medical practice.

G. Observations of Participant Behavior

Dr. Shiffler was pleasant and cooperative toward CPEP staff and clinical consultants, and conducted himself in a professional manner throughout the Assessment. He submitted all the required documentation in a timely manner.

IV. Assessment Summary

CPEP's Assessment conclusions about the participant-physicians are based solely upon our review of initial documents provided by the participant, the referring agency or institution, assessment findings, reports, interviews and meetings with the physicians in question. Our findings are not based upon the determinations or conclusions of peer review, judicial or state licensing bodies.

This Assessment is intended to provide an evaluation of Dr. Shiffler's clinical abilities in family practice. An Assessment such as that done by CPEP does not involve direct observation of the participant-physician at work. Our conclusions, therefore, can address only whether the physician possesses the knowledge and judgment necessary to perform. We cannot predict actual behavior.

Note: CPEP's Assessment is intended to provide an evaluation of Dr. Shiffler's clinical abilities in family practice. The Assessment is not designed to provide an evaluation of behavioral issues or of the consequences of physical or mental health disorders.

A. Medical Knowledge

During this Assessment, Dr. Shiffler demonstrated knowledge that was broad, but lacked depth. Areas of relative strength included back pain, preventive monitoring of the diabetic, and hyperlipidemia. In some instances it was difficult to coax Dr. Shiffler to demonstrate his knowledge (to be discussed further in section B. below). He did eventually show a base of knowledge in routine health maintenance screening, but his knowledge was not complete. He had basic knowledge of the cardiology topics discussed, but did not appear to know first line recommendations for hypertension according to JNC-7 and demonstrated difficulty navigating a discussion of chest pain and heart failure. Dr. Shiffler demonstrated inadequate abilities on an ECG interpretation exercise; he stated that he does not "read" ECGs, however, he does order and perform them, and sends them selectively to a cardiologist for over-reading.

While Dr. Shiffler's knowledge of the evaluation of back pain was marginally adequate, his evaluation of arthritis was lacking. A common procedure in his practice was trigger point injection (500 to 1000 per month, by his self-report), yet he was unsure of the dosing of medications that he used. Dr. Shiffler did not display knowledge of indications for the medications that he uses in pain management, including narcotic analgesics and injectable steroids. He was not able to describe a positive straight leg raise, nor was he able to describe

how to identify the level of radiculopathy. Dr. Shiffler's knowledge of neurology appeared to be a particular weakness. As well as the issues regarding back pain noted above, he was not able to describe an acceptable neurological exam and had an incorrect understanding of deep tendon reflexes.

His knowledge of the evaluation of possible dementia and TIA was lacking. Dr. Shiffler had some knowledge of diabetes, but with gaps, and his understanding of treatment was limited. Overall, in various discussions, Dr. Shiffler revealed poor understanding of pharmacology.

B. Clinical Reasoning

Dr. Shiffler revealed poor overall clinical judgment and reasoning during this Assessment. His discussions were sometimes disorganized and illogical, and his charts reflected similar disorganization. At times the consultants were able to re-direct Dr. Shiffler back to the relevant issues. It is not clear to what degree, if any, this may have masked his knowledge. Dr. Shiffler's ability to gather adequate data in the clinical scenarios was variable, and he sometimes jumped to conclusions. In actual patient records, though difficult to read, information and exam data was sparse, and did not appear adequate. Similarly, many other aspects of his performance were variable. Dr. Shiffler was not consistently able to identify acuity of scenarios, and though he voiced willingness to refer to specialists, the consultants did not feel confident in his ability to identify his own limitations.

Dr. Shiffler was able to formulate brief differential diagnoses. However, the differential lists lacked the structure necessary to ensure adequate consideration to common and serious disease. In hypothetical cases, he demonstrated flexibility of thinking and the ability to make new considerations when additional information was provided by the consultants.

Dr. Shiffler demonstrated problems with application of knowledge in several of his actual patient cases. There were unclear indications for medications prescribed or procedures performed. He was criticized for continuing to prescribe narcotics to a patient who he believed was abusing the drugs, for example. A review of these records, a sample of approximately 30% of the patients that he saw during the time frame selected, indicate indiscriminate prescribing of centrally acting agents, in particular, narcotics and benzodiazepines. One of the consultants made the concerning observation that Dr. Shiffler did not seem able to prioritize risks during patient assessments.

C. Communication

Dr. Shiffler's communication skills were professional during the Assessment. Despite some limited recommendations, Dr. Shiffler exhibited generally adequate physician-patient communication skills when conducting Simulated Patient interviews.

D. Documentation

Dr. Shiffler's patient care documentation was evaluated on the basis of outpatient charts from his practice and notes written at CPEP.

Dr. Shiffler demonstrated unacceptable documentation skills in his actual patient records. The records were incomplete, poorly legible, and disorganized, although his progress note template had an organized structure that Dr. Shiffler did not use well.

Dr. Shiffler's SP notes were also unacceptable. His handwriting was difficult to read. His histories of present illness were brief and difficult to follow, as were his recorded examinations. He was inconsistent in the inclusion of some items. Assessments consisted of one or more single-word diagnoses, without indication of differential diagnosis or discussion of status or clinical reasoning. Plans were present and prescription names were listed, but sometimes did not include directions, quantity, and refills; at other times it was too difficult to read what was written.

E. Review of Health Information and Observations of Behavior

Dr. Shiffler's overall results on the cognitive function screen were within normal limits. His area of greatest relative weakness was memory, where his scores were variable. Review of Dr. Shiffler's health documentation indicated that he has a condition that could affect his medical practice.

F. Summary

Overall, Dr. Shiffler's knowledge was broad but superficial. His clinical judgment and reasoning were poor. Dr. Shiffler's communication skills were adequate with SPs and peers. His documentation skills were unacceptable for both the SP encounters and actual patient records. Dr. Shiffler has a condition that has the potential to impact his medical practice. His cognitive function screen was within normal limits.

V. Implications and Recommendations

Dr. Shiffler appeared open to suggestions from the communication consultant. He expressed an interest in providing good care to his patients and seemed to derive great satisfaction from his work. However, his educational needs are significant, and it was not clear if he possessed insight into his educational needs.

Areas of Demonstrated Need (including, but not limited to):
The following clinical topics were identified as areas in which Dr. Shiffler should improve his knowledge. This list is only intended to provide a foundation for Dr. Shiffler's retraining; other

areas pertinent to the practice of family practice should be considered as Dr. Shiffler engages in his educational endeavors.

Knowledge

- Routine health maintenance:
  - Guidelines for adults;
  - Screening in children for hyperlipidemia and thyroid disease;
- Cardiology:
  - Treatment of hypertension;
  - Chest pain:
    - Potential etiologies;
    - Characteristics of cardiac versus non cardiac;
    - Evaluation, including ways to help differentiate cardiac from non-cardiac pain;
    - Physiology of coronary artery disease;
    - Mechanism of action of cardiac medications;
    - Potential etiologies for chronic elevations in creatine kinase;
  - Heart failure: optimal and maximal treatment for CHF;
  - ECG interpretation;
- Musculoskeletal disorders:
  - Evaluation of joint complaints;
  - Evaluation and treatment of arthritis of various types;
  - Dosing of medications for trigger point injections;
- Pain management: indications for medications in pain management, including analgesics and injectable steroids;
- Back pain: definition of a positive straight leg raise; identifying the level of radiculopathy;
- Neurology:
  - Clinical neurological examinations;
  - Evaluation of the patient with possible dementia;
  - Evaluation of TIA;
  - Potential etiologies for headache;
- Diabetes: diagnostic criteria; oral diabetic agents; insulin; Byetta;
- Tension pneumothorax: urgent treatment;
- Potential causes of pancreatitis;
- Potential causes of abdominal pain;
- Evaluation of abdominal pain and the role of radiographic testing;
- Pyelonephritis: indications for hospitalization;
- Mechanisms of disease/pathophysiology;
- Pharmacology: mechanism of action of medications.

Judgment

- Organized and logical approach;
- Ability to gather adequate data to proceed with a diagnostic and therapeutic plan;

- Refrain from premature conclusions;
- Accurate identification of acuity of illness;
- Understanding of limitations;
- Structured formulation of differential diagnoses;
- Application of knowledge in practice;
- Ability to prioritize risks during patient assessments.

Documentation

- Inclusion of all important patient management tools, such as problem lists and chronic disease flow sheets;
- Legibility;
- Complete and organized documentation;
- Inclusion of clinical reasoning;
- Documentation of informed consent.

Educational Recommendations (including, but not limited to):

Because of the extent of the deficiencies identified, the best option would be for Dr. Shiffler to retrain for a period of time in a residency or residency-like setting. However, if the licensing board decided that it met local standards and was safe to allow Dr. Shiffler to retrain in a non-residency setting, he would require full supervision while updating his knowledge base. CPEP is available to speak with the Board and Dr. Shiffler about options and resources, including an Educational Intervention. Any remediation would require interest by the Board, intensive effort, extensive resources, and full commitment by Dr. Shiffler.

VI. Signatures

The Assessment Report reflects the effort and analysis of CPEP's Medical Director, Associate Medical Directors, and administrative staff.

CPEP Representatives

Elizabeth Grace, M.D.
Medical Director

9-5-07
Date

Elizabeth J. Korinek, M.P.H.
Executive Director

9-5-07
Date

Participant

My signature below indicates that I have had the opportunity to review the Assessment report. It does not necessarily mean agreement with or approval of the report.

Joel D. Shiffler, M.D.

9-5-2007
Date

PARTICIPANT RESPONSE TO CPEP ASSESSMENT REPORT

(Optional)

Please type or write your response. You may attach additional pages. Only comments received by the identified due date will be attached. Articles, charts, research papers and expert opinions will not be accepted.

(Please see Dr. Shiffler's attached Response.)

Joel D. Shiffler, M.D. Date

Assessment Report
Joel D. Shiffler, M.D.

PARTICIPANT RESPONSE TO CPEP ASSESSMENT REPORT

Please accept this as my response to the CPEP Assessment Report.

First, with all due respect to CPEP, I do not believe the assessment report is an accurate reflection of my clinical knowledge in my specialty of family medicine, nor does it fairly represent my approach to the treatment of my patient's in a day to day practice setting. The CPEP assessment involved predominantly hypothetical scenarios in discussion with physician reviewers. The descriptions of the hypothetical patients and discussions initiated by the reviewers were often vague and incomplete. In some of those scenarios, I struggled to be responsive to the reviewers more so than I believe I would in real hands on patient care. I would further point out that I believe my performance was better with the simulated patient's than in hypothetical discussion with the physician reviewers.

On page 4 of the assessment, the first clinical reviewer comments and that there was no indication that I provided informed consent to my patient's prior to trigger point injection. While my documentation may not make that clear, my patient's are always informed about the indications, risks and then if it regarding these injections. My office practice includes not only patients with appointments, but also patient's who come to the office on a walk-in basis. I would be the first to admit that when seeing a large volume of patient's, documentation is often not what I would prefer to be. I am in basic agreement with the reviewers that my documentation each to be improved in both completeness and legibility, and I intend to take steps to improve my medical record documentation. I want to be clear, however, that lack of documentation does not necessarily translate to lack of proper medical care. In addition, is also true that in a visit with an established patient, rather than a new patient visit, documentation tends to be more focused to the patient complaint and may not always include general information about the patient.

On page 5 of the assessment, the reviewer comments that I would ask a new patient about tobacco and marijuana use, but did not mention alcohol or other illicit substances. While I may not specifically mentioned those things to the reviewer, in our office we commonly would inquire of a patient concerning a history of alcohol or substance abuse. It is further noted that I was not knowledgeable about the components of an annual exam. I do not recall the reviewer asking me to recite the components of an annual exam. On page 6, the reviewer commented that my knowledge of preventative health maintenance guidelines was incomplete. I believe that is an unfair assessment and contradictory of much of the comments which the reviewer made elsewhere concerning that discussion. In my office, I extensively send patients for yearly Pap smears,

mammograms and periodic colonoscopy. I also order PSA testing for prostate cancer screening on age-appropriate men.

On page 7, regarding the hypothetical patient with joint pain, I do believe I commented on weight-loss and range of motion exercises during that discussion, even though it is commented by the reviewer that I did not. I do agree that those would be important points of discussion to have with the patient with osteoarthritis. I also believe the reviewer misinterpreted my comment about Xanax and pain. The report leaves the impression that I thought Xanax was a medication used for pain management. I simply made a comment to the reviewer that it has been my experience that some patients with chronic pain benefit from Xanax to manage their anxiety. Further, on page 8, in the discussion regarding trigger point injections, I'm surprised that the reviewer jumped to the conclusion that I was unfamiliar with a medication (bupivacaine) simply because I stumbled when pronouncing it. That comment seemed overly harsh to me. I utilize trigger point injections commonly with my patients for pain control and have never had a problem with that procedure. Our nurses prepare the injections and are experienced in drawing up the medication. I believe that is fairly common in most family practice settings.

On page 15, regarding the hypothetical patient with recurrent episodes of low back pain, I do not recall being asked specifics about differentiating between motor, sensory and deep tendon reflex examination. On page 16, with respect to a discussion concerning narcotic contracts in my practice, it is commented that I did not describe the outcome of a broken contract. I may not have offered that information, and I do not recall that reviewer specifically inquiring about that circumstance, however if one of my patients and breaks the narcotics contract, we typically provide them with 30 days in which to find a new physician to undertake their care.

With regard to the discussion of the report concerning ECG interpretation, I did not hold myself out as an expert in electrocardiogram interpretation. Typically, I do not interpret ECG in the office, and would only order and ECG if I have a patient who is an acute episode of chest pain for which I am making arrangements to send him to the emergency room. In that setting, I would typically perform and ECG to send along with the patient. Therefore, performing ECG in my office is infrequent, and I do not rely upon my interpretation in managing patients. I feel the assessment report is misleading when it suggests that I put patients at risk with respect to my interpretation of electrocardiograms, because that is not the case. Any patient having acute cardiac symptoms is immediately referred to the ER.

I am concerned about a comment in the report made on page 19 under "Review of Health Function", stating that a review of my health documentation indicated that Dr. Shiffler has a condition that could affect his medical practice. In my view, this statement is completely inflammatory, vague and lacks any specificity which would even permit me to be responsive to the comment. It seems that this comment was made for no other purpose than to create prejudice in the mind of anyone who reads the assessment report. Since the writer is not specific as to what "medical condition he or she is referring to, I

am left at a disadvantage in attempting to address it. As the West Virginia Board of Medicine is aware, I have been fully evaluated by a forensic psychiatrist expert chosen by the Board, who reported that I am emotionally and cognitively fit to practice family medicine.

In conclusion, it is my belief that the assessment report done by CPEP is a poor predictor of my day to day performance as a physician in my office practice. I am very concerned that CPEP appears biased in their approach to this type of physician assessment. It is obvious that they have considerable business from state licensing boards, and I worry that it appears to be in their interest to find fault with a physician's ability to practice. I do not deny that I can benefit from additional continuing medical education to strengthen and improve my clinical abilities, and I am open to pursuing improvement along those lines. However, I believe that CPEP's assessment of my deficiencies is grossly overstated and hypercritical. Thank you.

Joel D Shiffler MD

Joel D. Shiffler, M.D.

9-5-2007

Date

ASSESSMENT FOCUS AREAS AND PROGRAM DESIGN

The Assessment is designed to evaluate the physician-participant through use of specialty-specific, individualized testing tools. An Associate Medical Director for Assessment Services oversees the Assessment and attends clinical interviews to ensure that the process is reflective of the physician-participant's practice specialty and also takes into account any noted reason for referral. Results from the physician-participant's performance in each assessment modality are incorporated into an Assessment Report. The Assessment Report reflects the effort and analysis of CPEP's Medical Director, Associate Medical Director and administrative staff.

DESCRIPTION OF FOCUS AREAS

Clinical Judgment and Reasoning reflect the physician's thought processes and integration of clinical knowledge with the patient's presentation, history, and other health information to determine acuity and urgency and then to identify a treatment plan or approach, while considering risks or benefits of proposed plan(s). Application of Knowledge is an important component of clinical judgment and reasoning that shows how the physician uses his/her knowledge and clinical reasoning in actual patient care. CPEP's evaluation of the physician's application of knowledge is based on review of actual patient charts and answers an important question: does the physician use his knowledge appropriately in the treatment of patients in the office and/or hospital settings?

Medical Knowledge describes the physician-participant's understanding of the specialty-specific components of medicine necessary for clinical evaluation and problem solving in practice. Three key elements of knowledge in topics relevant to practice are evaluated: the physician's foundation of knowledge, depth and breadth of understanding, and current awareness of available options and medical approaches.

Patient Care Documentation indicates the physician's understanding and ability to create effective written notes that explain diagnostic considerations, supporting data, risks or other considerations, and treatment approach, both in the context of one encounter as well as multiple interactions over time.

The physician's Communication Skills reflect the ability to verbally express and receive information, as well as integrate verbal and non-verbal observations in interactions with peer professionals and patients.

DESCRIPTION OF EVALUATION TOOLS

Selection of the testing modalities varies with each Assessment. Please refer to the Assessment Report, *Section I, CPEP Assessment Process*, for further information.

Structured Clinical Interviews

Clinical Interviews are oral evaluations of the physician-participant conducted by physician-consultants in the same specialty area. Each consultant is certified through a Board recognized by the American Board of Medical Specialties. The interview is conducted in the presence of the Associate Medical Director. The consultant asks about patient care management based on charts submitted by the participant and hypothetical case scenarios. Radiologic studies or videotapes of surgical procedures may also be used in the interview process. These ninety-minute oral interviews are used to evaluate the physician-participant's medical knowledge, clinical judgment, and peer communication skills.

Note: On occasion, physician-participants are unable to provide charts from their practice, either because they have not been in practice for a number of years or because the facility at which they work is unable or unwilling to release them. In these situations, hypothetical case scenarios are used as the basis for the interviews.

Electrocardiogram (ECG) Interpretation

Physician-participants whose practice includes reading ECG tracings are presented with eleven ECG tracings and asked to provide an interpretation and course of action for each.

Fetal Monitor Strip Interpretation

Physician-participants providing obstetric care in their practice are asked to read twelve fetal monitor strips and provide an interpretation and course of action for each strip.

Physician-Patient Communication Evaluation

Effective communication and formation of therapeutic physician-patient relationships are assessed through the use of Simulated Patient (SP) encounters. The physician-participant conducts patient interviews in an exam-room setting. The patient cases are selected based on the physician-participant's specialty area. Both the SPs and the physician-participant evaluate the interaction. The patient encounters are videotaped and analyzed by a communication consultant. The consultant provides the physician-participant with feedback.

Patient Care Documentation

Physician-participants are asked to submit redacted copies of patient charts. The charts are reviewed for documentation legibility, content, consistency and accuracy. The physician's attention to pertinent medical details is noted.

Review of Documentation – Simulated Patient Encounter Progress Notes

Following the Simulated Patient (SP) encounters, the physician-participant is asked to document each interaction in a chart note.

Cognitive Function Screen

MicroCog™, a computer-based assessment of cognitive skills, is a screening test to help determine which physician-participants should be given a complete neuropsychological work-up. The test is viewed as a *screening instrument only* and is not diagnostic.

> *This screening test does not require proficiency with computers; a proctor is available to answer questions about test instructions. Test performance or expected test performance can be impacted by a number of factors, including normal aging and background. A neuropsychologist analyzes the test results, taking these factors into account.*

Review of Health Information

The physician-participant is asked to submit the findings from a recent physical examination as well as hearing and vision screens. If indicated, program staff requests information related to specific health concerns.

FEB 0 8 2008
By

Good Shepherd First
1230 Garfield Avenue
Parkersburg, WV 26101
(304)422-3999

2-5-2008

Sir Govenor Manchin,

I ask for your assistance in helping myself as a presently treating Family Physician in Parkersburg needing freed from the frivilous suspicion of the govenor's self elected Board of Medicine.
If you can please listen to as many patients who I can get to travel to the capital building's steps and talk to you on the truth to just how they are treated as a patient in my office even after the Board has deemed me with lacking skills to practice.

Or if you can free me, I will promise a fair number of high tech jobs to the state of West Virginia if and when a potential computer company,I am working on starting, is established and running. Its a more than fair trade for the stress you take off me and my patients who like me as their medical doctor .

Perhaps you can be the arbitrator at listening to what My lawyer and I have seen as inconsistencies in the Board of Medicine alliance with demands on me to see an Education Planning group who have unfairly evaluated my ways of practice. All of this comes from the board's vigilance to hearing continued suspicious hype and gossip about me and not the truth.

Yes the state of west virginia needs good doctors and I am giving that. Please don 't take that away from my patients and leave me without anywhere to go because of the situation the Board of Medicine continue to ride me.

Wholeheartedly, I thank you and the people will thank you many times more;

- I promise you that with possibly many new jobs.

Sincerely,

Joel David Shiffler MD

[redacted]

Exhibit 4

State of West Virginia
Joe Manchin III
Governor

Office of the Governor
State Capitol
1900 Kanawha Boulevard, E.
Charleston, WV 25305

Telephone: (304) 558-2000
Toll Free: 1-888-438-2731
FAX: (304) 342-7025
www.wvgov.org

February 12, 2008

Joel David Shiffler, MD
Good Shepherd First
1230 Garfield Avenue
Parkersburg, WV 26101

Dear Dr. Shiffler;

I am in receipt of your letter concerning the Board of Medicine and the complaint registered against you. Although it is a responsibility of the Governor to appoint members to the various licensure boards, those boards operate independently from the Governor's office and are considered a separate entity when it comes to their decision-making process.

In order to preserve the absolute integrity of that process, the Office of Governor cannot intercede and therefore, the Governor cannot make recommendations to the Board regarding any parties coming before it with licensure issues. As such, the Governor is without the authority to grant you the relief requested in your letter. I recommend you contact the Board of Medicine directly and/or consult with legal counsel concerning any issues you may have with regard to any disciplinary action of the Board.

I hope this information is helpful, and that you will not hesitate to contact me if I can be of assistance to you in other matters.

With warmest regards,

Scott Cosco
Director of Intergovernmental Affairs

CC: Carte Goodwin, General Counsel

[redacted]

Exhibit 5

CPEP
Center for *Personalized* Education for Physicians

July 31, 2008

Joel D. Shiffler, M.D.
P.O. Box 4346
Parkersburg, WV 26104

Dear Dr. Shiffler:

Thank you for participating in the CPEP Educational Intervention. CPEP's Associate Medical Director (AMD), Anna Wegleitner, M.D. will provide the clinical oversight of the education process. Sharon Miller will provide administrative oversight.

This notebook contains needed materials for your participation as well as materials needed by your Preceptor. Please do the following *within 30 days* of the date of this letter, unless otherwise noted:

1. **Choose a time for a regularly scheduled phone call with CPEP and return the form (Tab 1) to CPEP *within 10 days* of receipt.** You will speak with the AMD every-other-month (to be determined) and CPEP staff on the alternating months. Your Preceptor is requested to participate in the calls with the AMD.
2. **Forward the contents behind Tab 3, which includes the Assessment Report, Education Plan, Preceptor Job Description (the last 4 pages of the Education Plan), Confidentiality Policy and Agreement, and other Preceptor/Instructor materials, to the identified Preceptor candidate(s).**
3. Submit the resume(s) for the candidate(s) to CPEP for the AMD to grant approval. *Candidates must review the materials mentioned above prior to the approval process.* Instructors must be approved prior to initiating the Supervised Experience. The Preceptor should be identified ***within 30 days*** of initiating the Plan.
4. After the candidate(s) has been approved, request that the Preceptor sign the *Job Description(s)* and the *Confidentiality Policy and Agreement* (blue sheet) and submit to CPEP. Please follow up with the Preceptor to ensure that these documents are submitted.

Important to note:

1. Your Education Plan will officially begin August 1, 2008 unless you request, in writing, to delay the start date. You are expected to begin your self-study educational activities immediately if you haven't already. If monthly monitoring fees have not begun, you will now begin receiving monthly charges.
2. Education Logs, article summaries, continuing medical education (CME) credits, and Preceptor Reports are due the *5th of every* month. **These submissions must be mailed or emailed to CPEP. Faxed submissions will not be accepted.**
3. Charts submitted to CPEP for review will be due the *5th* of every even- or odd-numbered month, depending on when your telephone call is scheduled (Tab 1). You must return your requested scheduled times to determine which month your charts will

be expected. We will notify you as to which months you will submit your charts.

4. If Education Logs, Preceptor Reports, and/or charts are not submitted by the 5th or the month, your monthly call with the AMD may be cancelled, thus you will be out of compliance with your Education Plan.
5. Progress reports reflecting your educational activity (as defined by your start date) will be distributed to you, and up to three entities for which we have received authorization, approximately every trimester. You will receive verbal feedback during the first quarter.
6. CPEP is unable to accept documents submitted by fax. Documents and materials should be mailed so that they are received by CPEP no later than the *5th* of each month.

If you have any questions or concerns, please feel free to contact us. We look forward to working with you.

Sincerely,

Sharon Miller

Sharon Miller
Manager, Education Services

SM/acd

Enclosure

cc: ✓Compliance Officer, West Virginia Board of Medicine

CPEP Center for *Personalized* Education for Physicians

January 6, 2009

Joel D. Shiffler, M.D.
P.O. Box 4346
Parkersburg, WV 26104

Dear Dr. Shiffler:

Enclosed, please find a copy of your Progress Report (Report). A copy of this document has been sent to the organizations and/or individuals listed below. **Please read the Report carefully as it contains recommendations, modifications, and dates regarding your Education Plan.**

As noted in the Report, you have searched for a Preceptor but have been unsuccessful to date. Also noted in the Report, you have requested CPEP's assistance to find a Preceptor while you continue to search as well. CPEP has initiated the search but has not yet identified an appropriate candidate.

Feel free to contact us if you have any questions.

Sincerely,

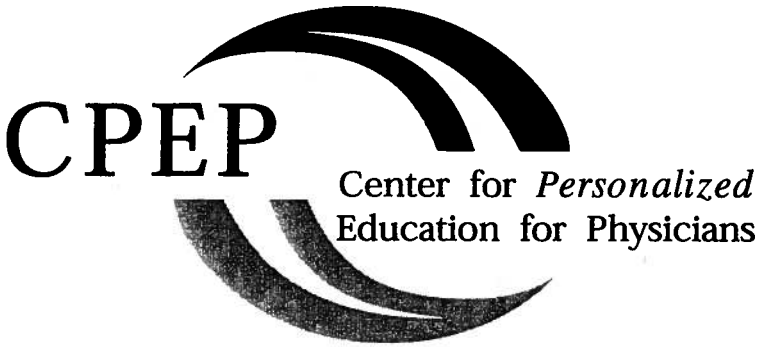
Sharon Miller

Sharon Miller
Manager, Education Services

/sm

Enclosure

cc: ✓Robert C. Knittle, West Virginia Board of Medicine



EDUCATIONAL INTERVENTION

Initiated August 2008

PROGRESS REPORT I

January 2009

for

Joel D. Shiffler, M.D.

A National Leader for Evaluating and Enhancing Physician Performance

7351 Lowry Boulevard, Suite 100
Denver, Colorado 80230
Phone: 303-577-3232
Fax: 303-577-3241
www.cpepdoc.org

The information following is a description of Dr. Shiffler's educational activities for the months of August 2008 through December 2008. Anna Wegleitner, M.D., served as Dr.Shiffler's Associate Medical Director (AMD) for this reporting period. CPEP ultimately determines the progress made and areas that require improvement. Comments and recommendations below reflect the review of materials and/or charts that were submitted for this period only, unless otherwise noted.

LEARNING OBJECTIVES

Please see further comments following the Learning Objectives.

C = Complete I = Incomplete (Not received within acceptable/defined timeframe) IP = In progress (Within acceptable /defined timeframe)

The following table reflects the completion of relevant article summaries only. The Objective will continue to be addressed until completion of the Plan.

Module A I. To improve evidence-based medical knowledge, including but not limited to the following:	
1. Routine health maintenance:	IP
a. Guidelines for adults;	IP
b. Screening in children for hyperlipidemia and thyroid disease;	C
2. Cardiology:	IP
a. Treatment of hypertension;	C
b. Chest pain:	IP
1) Potential etiologies;	C
2) Characteristics of cardiac versus non cardiac;	C
3) Evaluation, including ways to help differentiate cardiac from non-cardiac pain;	C
4) Physiology of coronary artery disease;	IP
5) Mechanism of action of cardiac medications;	IP
6) Potential etiologies for chronic elevations in creatine kinase;	IP
c. Heart failure: optimal and maximal treatment for congestive heart failure (CHF);	C
3. Musculoskeletal disorders:	IP
a. Evaluation of joint complaints;	IP
b. Evaluation and treatment of arthritis of various types;	IP
c. Dosing of medications for trigger point injections;	IP
4. Pain management: indications for medications in pain management, including analgesics and injectable steroids;	IP
5. Back pain: definition of a positive straight leg raise; identifying the level of radiculopathy;	IP
6. Neurology:	C
a. Clinical neurological examinations;	C
b. Evaluation of the patient with possible dementia;	C

c. Evaluation of transient ischemic attack (TIA);	C
d. Potential etiologies for headache;	C
7. Diabetes:	IP
a. Diagnostic criteria;	IP
b. Oral diabetic agents;	C
c. Insulin;	IP
d. Byetta;	C
8. Tension pneumothorax: urgent treatment;	C
9. Potential causes of pancreatitis;	C
10. Abdominal pain:	IP
a. Potential causes of abdominal pain;	IP
b. Evaluation of abdominal pain and the role of radiographic testing;	IP
11. Pyelonephritis: indications for hospitalization;	C
12. Mechanisms of disease/pathophysiology;	IP
13. Pharmacology: mechanism of action of medications.	IP
II. To improve interpretation of electrocardiograms (ECGs) and describe appropriate plans.	IP

Module B will be completed when a Preceptor is identified and approved.

Module B (Point of Care Experience) Dr. Shiffler will broaden his foundation of skills and knowledge for improved patient care during this experience. He and the Preceptor should focus on the Plan Learning Goals.	

Modules C-D are in progress during participation in the Education Plan. Please refer to the Educational Activities section below for comments. The Associate Medical Director and the Preceptor will determine when adequate progress has been achieved and maintained for completion.

Module C Dr. Shiffler should consistently demonstrate appropriate clinical judgment in areas that include, but are not limited to, the following:	
1. Organized and logical approach;	
2. Ability to gather adequate data to proceed with a diagnostic and therapeutic plan;	
3. Refrain from premature conclusions;	
4. Accurate identification of acuity of illness;	
5. Understanding of limitations;	
6. Structured formulation of differential diagnoses;	
7. Application of knowledge in practice;	
8. Ability to prioritize risks during patient assessments.	

Module D To improve documentation including, but not limited to, the following areas:	
1. Inclusion of all important patient management tools, such as problem lists and chronic disease flow sheets;	
2. Legibility;	
3. Complete and organized documentation;	
4. Inclusion of clinical reasoning;	
5. Documentation of informed consent.	

POINT OF CARE EXPERIENCE (PoC) EXPERIENCE

Dr. Shiffler initiated his Education Plan in August 2008; however, he has not been able to identify an appropriate Preceptor candidate to date. Dr. Shiffler reported to CPEP that he had contacted numerous physicians. Two physicians agreed to submit their curriculum vitae to CPEP for the approval process. However, one physician was not qualified and the other ultimately declined to participate. In November, Dr. Shiffler requested that CPEP search for a Preceptor while he continued to search as well. CPEP has initiated the search process but has not yet identified a qualified Preceptor. Once a Preceptor has been identified and approved, the PoC experience should begin within 30 days of the approval, if not sooner. CPEP recommends that, once initiated, the PoC experience is completed in a timely manner.

PRECEPTOR MEETINGS

Once a Preceptor has been identified and approved, the Preceptor meetings should begin within 30 days of the approval. Dr. Shiffler and the Preceptor should refer to Module C of the Education Plan for more information about the Preceptor meeting requirements, goals, and reporting.

EDUCATIONAL ACTIVITIES

Self-study

Dr. Shiffler initiated educational activities in August 2008 and began submitting Education Logs in September documenting his self-study. Education Logs were subsequently received monthly through December.

During this period, Dr. Shiffler researched appropriate topics, utilized appropriate resources, and dedicated adequate time to self-study. Dr. Shiffler addressed topics such as transient ischemic attack (TIA), chest pain, dementia, hypertension, and type 2 diabetes mellitus. He referred to appropriate evidence-based resources that included *UptoDate*, *American Family Physician Journal*, *MDConsult*, and *The Medical Letter*. Dr. Shiffler also read Harrison's Textbook of Internal Medicine and began reviewing electrocardiogram interpretations with the text recommended in his Education Plan, Rapid Interpretation of EKGs by Dubin. Dr. Shiffler submitted documentation of 70 continuing medical education (CME) credit hours for his participation in the Core Content Review of Family Medicine. Categories in which he received CME included

health maintenance, healthcare systems, infectious diseases, including human immunodeficiency virus (HIV), and medications.

According to Education Logs submitted to CPEP, Dr. Shiffler devoted more than adequate time to self-study this period. However, he submitted few article summaries. During a telephone conversation with the AMD in October, Dr. Shiffler explained that he had written, but not yet submitted, a summary for each individual article that he read. The AMD reviewed the Plan requirements with Dr. Shiffler and explained that although he should utilize at least two resources for each topic, he should combine the information into only one summary per topic. After this clarification, Dr. Shiffler submitted several article summaries in November, which were appropriate and which the AMD approved. Dr. Shiffler should submit the remaining article summaries to CPEP by February 5, 2009, according to CPEP's recommendation of completing this requirement by the end of the second quarter of participation.

The AMD approved Dr. Shiffler's self-study this period and encouraged him to maintain his commitment to self-study.

Medical Knowledge

Comments were not available this period. Comments will be available once Dr. Shiffler begins working with his Preceptor and submitting charts to CPEP for review.

Clinical Judgment and Patient Care

Comments were not available this period. Comments will be available once Dr. Shiffler begins working with his Preceptor and submitting charts to CPEP for review.

Documentation

Comments were not available this period. Comments will be available once Dr. Shiffler begins working with his Preceptor and submitting charts to CPEP for review.

Dr. Shiffler is reminded that the Plan recommended that he participate in a documentation course with a follow-up component. Dr. Shiffler should submit documentation to CPEP by February 5, 2009, of his enrollment in such a course. He should complete the course no later than April 2009, although the follow-up program would be completed after this date.

SUMMARY and RECOMMENDATIONS

Dr. Shiffler actively engaged in educational activities this period. He addressed numerous topics relevant to his Plan and obtained CME credit hours. Education Logs were submitted reflecting ample time dedicated to reading and research. Dr. Shiffler made progress toward completion of the article summary requirement after he received clarification. CPEP encourages Dr. Shiffler to continue his commitment to the educational activities and submit the remaining article summaries by February 5th. He should also continue working on the Core Content Family Medicine Review and submit documentation of the credit hours received.

It will be important for Dr. Shiffler to remain fully engaged in educational activities once the above activities have been completed. According to the Plan, Dr. Shiffler also needs to complete the American Academy of Family Physician's (AAFP) Self-Assessment program. He should also document ongoing participation in case-based CME activities such as those available through the AAFP Case Studies or the Cleveland Clinic for Continuing Education's web site. Additionally, he needs to complete a documentation course that has a follow-up program and complete that follow-up program.

CPEP encourages Dr. Shiffler to monitor his patient volume so that he is able to focus appropriately on his educational activities and make adequate progress in all areas of his Plan. Once the Preceptor has been approved, Dr. Shiffler will initiate the PoC experience as well as Preceptor meetings. He will need to be cognizant of the time commitment needed for these activities as well as for his remaining educational activities.

This Progress Report was created for Dr. Shiffler. It reflects the effort and analysis of CPEP's Associate Medical Director and CPEP's administrative staff.

SIGNATURES

Sharon Miller
Manager, Education Services

1. 6. 09
Date

Anna Wegleitner, M.D.
Associate Medical Director

1/6/09
Date

R. Curtis Arnold, DPM
South Charleston

Michael L. Ferrebee, MD
Morgantown

Angelo N. Georges, MD
Wheeling

Doris M. Griffin, MBA
Martinsburg

M. Khalid Hasan, MD
Beckley

Beth Hays, MA
Bluefield

State of West Virginia
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone 304.558.2921
Fax 304.558.2084

Carlos C. Jimenez, MD
Glen Dale

Vettivelu Maheswaran, MD
Charles Town

Bill May, DPM
Huntington

Joe E. Miller, LtCol USMC (Ret), MA
Hurricane

Badshah J. Wazir, MD
South Charleston

Kenneth Dean Wright, PA-C
Huntington

November 18, 2008

FILE COPY

Joel David Shiffler, M.D.
PO Box 4370
Parkersburg, WV 26104

Re: Enclosed Second Amended Consent Order

Dear Dr. Shiffler:

After your appearance before the Complaint Committee of this Board on November 9, 2008, the Complaint Committee discussed their deep concern about your failure to have started on your Board approved CPEP Educational Plan. The Complaint Committee understands that you have tried to obtain a preceptor and have not succeeded, but simply stated, this is not good enough. Accordingly, the Complaint Committee is asking that you sign the enclosed Second Amended Consent Order. It is essential that the many deficiencies described in the CPEP report be addressed, and promptly. The Complaint Committee is not of the opinion that it is in the public interest to let you continue to practice without your full participation in the Educational Plan. Please review the enclosure with care.

The Complaint Committee is of the opinion that you are in violation of the Amended Consent Order, that whatever efforts you have been making are not sufficient, but rather than lift the stay of suspension now, the members want to give you one more chance and to emphasize the importance of your adhering to what you have agreed to do. The Complaint Committee wants you to succeed in this effort, but to do so you must work harder at it than you have, now.

In September, two months ago, you advised us that Mr. Martin definitely was no longer representing you whatsoever; however, since he accompanied you to the meeting ten days ago, I am sending a copy of the Second Amended Consent Order to him. If he is representing you again, I know you will wish to discuss it with him. We expect the original signed and notarized Second Amended Consent Order back in the offices by December 1, 2008, at 4:30 p.m. We will

PRESIDENT
John A. Wade, Jr., MD
Point Pleasant

VICE PRESIDENT
J. David Lynch, Jr., MD
Morgantown

SECRETARY
Catherine Slemp, MD, MPH
Charleston

Exhibit 8

then obtain the signatures and enter the Second Amended Consent Order, sending you a copy for your records.

If there are questions, let me know.

Sincerely,

Robert C. Knittle

lab
Enclosure
pc: Edward C. Martin, Esq., w/enclosure

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: JOEL DAVID SHIFFLER, M.D.

SECOND AMENDED CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Joel D. Shiffler, M.D. ("Dr. Shiffler") freely and voluntarily enter into the following Second Amended Consent Order pursuant to the provisions of W. Va. Code § 30-3-14, et seq.

FINDINGS OF FACT

1. Dr. Shiffler currently holds a license to practice medicine and surgery in the State of West Virginia, License No. 20094, issued originally in 1999. Dr. Shiffler's address of record is in Parkersburg, West Virginia.

2. On May 22, 2007, the Board and Dr. Shiffler entered into a Consent Order, wherein Dr. Shiffler's West Virginia medical license was suspended for a period of eighteen (18) months following entry of the Order, unless earlier dissolved, and the suspension was stayed immediately, and Dr. Shiffler was permitted to continue to practice medicine without restriction, pending his compliance with the terms and conditions set forth in the May 22, 2007, Consent Order.

3. Within six (6) months following entry of the May 22, 2007, Consent Order, Dr. Shiffler was to attend the Colorado Personalized Education for Physicians ("CPEP") for a comprehensive assessment of his skills as a physician. The assessment was

conducted on June 28 – 29, 2007, and a copy of the assessment was sent directly to the Board's Complaint Committee for review.

4. The CPEP assessment revealed some deficiencies and recommended, in part, that Dr. Shiffler undergo the CPEP Educational Intervention Plan, which includes a program of supervised education. The Educational Intervention Plan would be designed to allow Dr. Shiffler to continue to practice medicine while concurrently addressing educational goals.

5. Pursuant to the May 22, 2007, Consent Order, Dr. Shiffler appeared before the Complaint Committee in January, 2008, to discuss the contents and conclusions of the CPEP assessment report.

6. After meeting with Dr. Shiffler regarding the CPEP assessment report, the Complaint Committee determined that appropriate additional conditions, accommodations, limitations and restrictions were necessary to ensure that Dr. Shiffler is fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

7. The **SUSPENSION** of Dr. Shiffler's license was extended until May 22, 2009, through an Amended Consent Order and the **SUSPENSION** was **STAYED**, pending Dr. Shiffler's compliance with arranging for a supervised Educational Intervention Plan through the Colorado Personalized Education for Physicians ("CPEP") and upon the Complaint Committee's receipt of the plan, in its sole discretion, at any time prior to May 22, 2009, the Complaint Committee could recommend appropriate additional conditions, accommodations, limitations or restrictions which the Complaint Committee deemed necessary.

8. The **STAY** of **SUSPENSION** was to remain and currently remains in effect for so long as Dr. Shiffler complies with the Amended Consent Order and completes the Educational Intervention Plan through CPEP and provides documentation of the same.

9. The CPEP Educational Intervention Plan was received by Dr. Shiffler and the Complaint Committee in May, 2008, and by letter of July 31, 2008, Dr. Shiffler was advised that the Education Plan would officially begin August 1, 2008. A letter of August 22, 2008, to Dr. Shiffler, confirmed telephone, chart submission, education logs, and preceptor report dates.

10. On September 16, 2008, Dr. Shiffler was sent a letter inviting him to the November 2008, meeting of the Complaint Committee and stating he was to find a preceptor promptly, and the letter required him to fully document his compliance with the CPEP Education Plan at the November 2008, meeting.

11. Dr. Shiffler attended the meeting in November and provided evidence that he had made efforts to find a preceptor but that he had not been able to find one to date.

12. A fundamental aspect of the CPEP Educational Plan is having a preceptor in place and it is not possible to complete or even commence the plan without one.

13. Dr. Shiffler has been practicing medicine and surgery for eighteen (18) months under a **STAYED SUSPENSION** and is four (4) months behind in commencing this plan and the Complaint Committee determined that in light of the deficiencies identified at CPEP and the fact that they remain unaddressed pursuant to the CPEP Educational Plan, appropriate additional conditions, accommodations, and restrictions are necessary to ensure that Dr. Shiffler is fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for patients.

CONCLUSIONS OF LAW

1. The Board has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. W. Va. Code § 30-3-1.

2. Prior to entry of the Consent Order on May 22, 2007, the Board found probable cause to substantiate charges against Dr. Shiffler pursuant to W. Va. Code § 30-3-14(c)(17), 11 CSR 1A 12.1 (e), (j), (w), and (x), and 11 CSR 1A 12.2(a)(C) and 12.2(d), relating to unprofessional conduct, failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable, prudent, physician engaged in the same or similar specialty as being acceptable under similar conditions and circumstances, prescribing controlled substances and other medications for personal use, and failing to conform to the principles of medical ethics of the American Medical Association, including opinion 8.19 regarding self-treatment.

3. The Board determined that it is appropriate and in the public interest to enter into an Amended Consent Order on February 25, 2008, to extend the period of Suspension and Stay because of the length of time which had passed and now the Board has determined that it is appropriate and necessary to enter into a Second Amended Consent Order.

4. This Second Amended Consent Order between the Board and Dr. Shiffler supersedes the prior Amended Consent Order entered on February 25, 2008, between the Board and Dr. Shiffler.

CONSENT

Joel D. Shiffler, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Second Amended Consent Order provided for and stated herein, and the proceedings conducted in accordance with this Second Amended Consent Order, to the following:

1. Dr. Shiffler acknowledges that, prior to entry of the May 22, 2007, Consent Order, he had the following rights, among others: the right to a formal hearing held in accordance with W. Va. Code §30-3-14(h) and §29A-5-1, et seq.; the right to reasonable notice of said hearing; the right to be represented by counsel at his own expense; and the right to cross-examine witnesses against him.

2. By entering into the Consent Order on May 22, 2007, relative to his practice of medicine and surgery in the State of West Virginia, Dr. Shiffler waived all rights to such a hearing.

3. Dr. Shiffler now consents to the entry of this Second Amended Consent Order, which supersedes the Amended Consent Order entered on February 25, 2008, which superseded the May 22, 2008, Consent Order.

4. Dr. Shiffler further understands that this Second Amended Consent Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the Consent of Dr. Shiffler, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. Pursuant to the May 22, 2007, Consent Order, the license to practice medicine and surgery of Dr. Shiffler was **SUSPENDED** for a period of eighteen (18) months, beginning on May 22, 2007, and ending on November 22, 2008, unless earlier dissolved by the Board, and said **SUSPENSION** was **STAYED** immediately, subject to Dr. Shiffler's compliance with the terms and conditions set forth in the Order.

2. Pursuant to the May 22, 2007, Consent Order, the Complaint Committee of the Board retained the right, in its sole discretion, to recommend appropriate additional conditions, accommodations, limitations or restrictions, which it deems necessary to ensure that Dr. Shiffler remains fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

3. Pursuant to the May 22, 2007, Consent Order, if the Complaint Committee of the Board, at the end of the one (1) year period following entry of the May 22, 2007, Consent Order, were to determine, in its sole discretion, that Dr. Shiffler had not made a good faith effort to comply with the terms and conditions of the May 22, 2007, Consent Order, then the Complaint Committee of the Board could recommend that the Board revoke the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, without further hearing or process.

4. Notwithstanding provisions in the May 22, 2007, Consent Order authorizing the revocation of Dr. Shiffler's license to practice medicine and surgery in the event of non-compliance, in the Amended Consent Order of February 25, 2008, the Board determined that the suspension of Dr. Shiffler's license should be extended for an additional period of six (6) months for a total of two (2) years, and the stay should remain in effect during this time, provided that certain additional conditions and limitations were placed upon Dr. Shiffler's license to practice medicine and surgery in the State of West Virginia.

5. The license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, License No. 20094, is now **REVOKED** and the **REVOCATION** is immediately **STAYED** and Dr. Shiffler may continue to practice medicine, pending his compliance with the terms and conditions set forth in this Second Amended Consent Order.

6. No later than January 9, 2009, Dr. Shiffler shall document in writing to the Board's Executive Director either that he has obtained a preceptor and is in full compliance with the CPEP Educational Plan or that he has not found a preceptor to perform the requirements of the CPEP Education Plan.

7. If he has obtained a preceptor and is in full compliance with the CPEP Educational Plan as of January 9, 2009, Dr. Shiffler shall remain in full compliance with the CPEP Educational Plan until it is fully and successfully completed.

8. As long as this Second Amended Consent Order is in effect, Dr. Shiffler shall continue to receive continued and regular treatment and monitoring by a Board approved Psychiatrist who shall continue to report in writing regularly every sixty

(60) days regarding Dr. Shiffler's ability and fitness to practice medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for patients, the last of which reports was dated October 30, 2008.

9. Upon full compliance and completion by Dr. Shiffler of the Educational Intervention Plan, as determined by the Complaint Committee of the Board, the Committee may recommend that the Board **DISSOLVE** the **STAYED REVOCATION** provided for herein.

10. If the Complaint Committee of the Board determines, in its sole discretion, that Dr. Shiffler has failed to obtain a preceptor and to successfully comply with and participate in and successfully complete the CPEP Educational Intervention Plan described herein, or if he otherwise violates any term or condition of this Second Amended Consent Order, the Complaint Committee of the Board reserves its right to recommend that the Board immediately **LIFT** the **STAY** of **REVOCATION,** which the Board may do without further hearing or process.

The foregoing Second Amended Consent Order was entered this _____ day of ___, 2008.

WEST VIRGINIA BOARD OF MEDICINE

_____
John A. Wade, Jr., M.D.
President

_____
Catherine Slemp, M.D., M.P.H.
Secretary

_____
Joel D. Shiffler, M.D.
Date: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public in and for said county and state, do hereby certify that Joel D. Shiffler, M.D., whose name is signed on the previous page, has this day acknowledged the same before me.

Given under my hand this _____ day of _____, 2008.

My commission expires _____.

_____Notary Public

FLAHERTY, SENSABAUGH & BONASSO, P.L.L.C.

Attorneys at Law

Morgantown
965 Hartman Run Road, Suite 1105
Morgantown, WV 26505
Telephone: (304) 598-0788
Fax: (304) 598-0790

200 Capitol Street
P.O. Box 3843
Charleston, WV 25338-3843

Telephone: (304) 345-0200
Fax: (304) 345-0260
www.fsblaw.com

Wheeling
1225 Market Street
P.O. Box 6545
Wheeling, WV 26003
Telephone (304) 230-6600
Fax: (304) 230-6610

Edward C. Martin
E-Mail: tedm@fsblaw.com
Direct Dial: (304) 347-4216

January 8, 2009

Via email and U. S. Mail
bobknittle@wvdhhr.org

Robert C. Knittle
Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

Re: ***Joel D. Shiffler, M. D.***

Dear Bob:

This is to provide you with additional information concerning Dr. Shiffler's ongoing search for an acceptable preceptor under his CPEP Educational Plan. By now, you should have received directly from CPEP a progress report, dated January 6, 2009, which evidences that Dr Shiffler is in full compliance with his CPEP Educational Plan. In the event that you have not yet received that document, I am attaching it to this correspondence. I would direct your attention to page 4 of the progress report which speaks to the issue of the preceptor search and the fact that CPEP is actively engaged in assisting Dr. Shiffler in that endeavor.

In addition, at your recommendation, we have been in touch with both Dr. Marshall Carper and Dr. Robert Walker. I have attached correspondence from Dr. Carper which explains why he had to decline assisting us as a preceptor. Alternatively, Dr. Walker indicated that he would be very interested in assisting Dr. Shiffler in establishing a point of care experience under the educational plan and assisting him with locating a potential preceptor to facilitate the Plan. I believe Dr. Walker, in particular, understands the challenge presented by the task of finding a preceptor willing to commit the time necessary. Unfortunately, Dr. Walker experienced a death in his family this past week and has been out of town, and therefore, I have not had an opportunity to speak with him in further detail as yet.

Exhibit 9

Finally, also attached to this correspondence is additional documentation including correspondence as well as a list of various family physicians that Dr. Shiffler has recently contacted in an effort to establish a preceptor. I believe that this documentation, coupled with the CPEP progress report, should serve to assure the Complaint Committee that Dr. Shiffler has taken the participation in the CPEP Educational Plan seriously and has made good faith efforts, with the assistance of others, to locate an acceptable preceptor. Should you have any questions in this regard, please do not hesitate to contact me.

Thank you for your courteous attention in this regard.

Sincerely,

Edward C. Martin

ECM/eab
Enclosures
cc: Joel D. Shiffler, M.D.

CPEP
Center for *Personalized* Education for Physicians

EDUCATIONAL INTERVENTION
Initiated August 2008

PROGRESS REPORT I
January 2009

for

Joel D. Shiffler, M.D.

A National Leader for Evaluating and Enhancing Physician Performance

7351 Lowry Boulevard, Suite 100
Denver, Colorado 80230
Phone: 303-577-3232
Fax: 303-577-3241
www.cpepdoc.org

CPEP
Center for *Personalized* Education for Physicians

January 6, 2009

Joel D. Shiffler, M.D.
P.O. Box 4346
Parkersburg, WV 26104

Dear Dr. Shiffler:

Enclosed, please find a copy of your Progress Report (Report). A copy of this document has been sent to the organizations and/or individuals listed below. **Please read the Report carefully as it contains recommendations, modifications, and dates regarding your Education Plan.**

As noted in the Report, you have searched for a Preceptor but have been unsuccessful to date. Also noted in the Report, you have requested CPEP's assistance to find a Preceptor while you continue to search as well. CPEP has initiated the search but has not yet identified an appropriate candidate.

Feel free to contact us if you have any questions.

Sincerely,

Sharon Miller

Sharon Miller
Manager, Education Services

/sm

Enclosure

cc: Robert C. Knittle, West Virginia Board of Medicine

The information following is a description of Dr. Shiffler's educational activities for the months of August 2008 through December 2008. Anna Wegleitner, M.D., served as Dr.Shiffler's Associate Medical Director (AMD) for this reporting period. CPEP ultimately determines the progress made and areas that require improvement. Comments and recommendations below reflect the review of materials and/or charts that were submitted for this period only, unless otherwise noted.

LEARNING OBJECTIVES

Please see further comments following the Learning Objectives.

C = Complete I = Incomplete (Not received within acceptable/defined timeframe) IP = In progress (Within acceptable /defined timeframe)

The following table reflects the completion of relevant article summaries only. The Objective will continue to be addressed until completion of the Plan.

Module A I. To improve evidence-based medical knowledge, including but not limited to the following:	
1. Routine health maintenance:	IP
a. Guidelines for adults;	IP
b. Screening in children for hyperlipidemia and thyroid disease;	C
2. Cardiology:	IP
a. Treatment of hypertension;	C
b. Chest pain:	IP
1) Potential etiologies;	C
2) Characteristics of cardiac versus non cardiac;	C
3) Evaluation, including ways to help differentiate cardiac from non-cardiac pain;	C
4) Physiology of coronary artery disease;	IP
5) Mechanism of action of cardiac medications;	IP
6) Potential etiologies for chronic elevations in creatine kinase;	IP
c. Heart failure: optimal and maximal treatment for congestive heart failure (CHF);	C
3. Musculoskeletal disorders:	IP
a. Evaluation of joint complaints;	IP
b. Evaluation and treatment of arthritis of various types;	IP
c. Dosing of medications for trigger point injections;	IP
4. Pain management: indications for medications in pain management, including analgesics and injectable steroids;	IP
5. Back pain: definition of a positive straight leg raise; identifying the level of radiculopathy;	IP
6. Neurology:	C
a. Clinical neurological examinations;	C
b. Evaluation of the patient with possible dementia;	C

c. Evaluation of transient ischemic attack (TIA);	C
d. Potential etiologies for headache;	C
7. Diabetes:	IP
a. Diagnostic criteria;	IP
b. Oral diabetic agents;	C
c. Insulin;	IP
d. Byetta;	C
8. Tension pneumothorax: urgent treatment;	C
9. Potential causes of pancreatitis;	C
10. Abdominal pain:	IP
a. Potential causes of abdominal pain;	IP
b. Evaluation of abdominal pain and the role of radiographic testing;	IP
11. Pyelonephritis: indications for hospitalization;	C
12. Mechanisms of disease/pathophysiology;	IP
13. Pharmacology: mechanism of action of medications.	IP
II. To improve interpretation of electrocardiograms (ECGs) and describe appropriate plans.	IP

Module B will be completed when a Preceptor is identified and approved.

Module B (Point of Care Experience) Dr. Shiffler will broaden his foundation of skills and knowledge for improved patient care during this experience. He and the Preceptor should focus on the Plan Learning Goals.	

Modules C-D are in progress during participation in the Education Plan. Please refer to the Educational Activities section below for comments. The Associate Medical Director and the Preceptor will determine when adequate progress has been achieved and maintained for completion.

Module C Dr. Shiffler should consistently demonstrate appropriate clinical judgment in areas that include, but are not limited to, the following:	
1. Organized and logical approach;	
2. Ability to gather adequate data to proceed with a diagnostic and therapeutic plan;	
3. Refrain from premature conclusions;	
4. Accurate identification of acuity of illness;	
5. Understanding of limitations;	
6. Structured formulation of differential diagnoses;	
7. Application of knowledge in practice;	
8. Ability to prioritize risks during patient assessments.	

Module D To improve documentation including, but not limited to, the following areas:	
1. Inclusion of all important patient management tools, such as problem lists and chronic disease flow sheets;	
2. Legibility;	
3. Complete and organized documentation;	
4. Inclusion of clinical reasoning;	
5. Documentation of informed consent.	

POINT OF CARE EXPERIENCE (PoC) EXPERIENCE

Dr. Shiffler initiated his Education Plan in August 2008; however, he has not been able to identify an appropriate Preceptor candidate to date. Dr. Shiffler reported to CPEP that he had contacted numerous physicians. Two physicians agreed to submit their curriculum vitae to CPEP for the approval process. However, one physician was not qualified and the other ultimately declined to participate. In November, Dr. Shiffler requested that CPEP search for a Preceptor while he continued to search as well. CPEP has initiated the search process but has not yet identified a qualified Preceptor. Once a Preceptor has been identified and approved, the PoC experience should begin within 30 days of the approval, if not sooner. CPEP recommends that, once initiated, the PoC experience is completed in a timely manner.

PRECEPTOR MEETINGS

Once a Preceptor has been identified and approved, the Preceptor meetings should begin within 30 days of the approval. Dr. Shiffler and the Preceptor should refer to Module C of the Education Plan for more information about the Preceptor meeting requirements, goals, and reporting.

EDUCATIONAL ACTIVITIES

Self-study

Dr. Shiffler initiated educational activities in August 2008 and began submitting Education Logs in September documenting his self-study. Education Logs were subsequently received monthly through December.

During this period, Dr. Shiffler researched appropriate topics, utilized appropriate resources, and dedicated adequate time to self-study. Dr. Shiffler addressed topics such as transient ischemic attack (TIA), chest pain, dementia, hypertension, and type 2 diabetes mellitus. He referred to appropriate evidence-based resources that included *UptoDate*, *American Family Physician Journal*, *MDConsult*, and *The Medical Letter*. Dr. Shiffler also read Harrison's Textbook of Internal Medicine and began reviewing electrocardiogram interpretations with the text recommended in his Education Plan, Rapid Interpretation of EKGs by Dubin. Dr. Shiffler submitted documentation of 70 continuing medical education (CME) credit hours for his participation in the Core Content Review of Family Medicine. Categories in which he received CME included

health maintenance, healthcare systems, infectious diseases, including human immunodeficiency virus (HIV), and medications.

According to Education Logs submitted to CPEP, Dr. Shiffler devoted more than adequate time to self-study this period. However, he submitted few article summaries. During a telephone conversation with the AMD in October, Dr. Shiffler explained that he had written, but not yet submitted, a summary for each individual article that he read. The AMD reviewed the Plan requirements with Dr. Shiffler and explained that although he should utilize at least two resources for each topic, he should combine the information into only one summary per topic. After this clarification, Dr. Shiffler submitted several article summaries in November, which were appropriate and which the AMD approved. Dr. Shiffler should submit the remaining article summaries to CPEP by February 5, 2009, according to CPEP's recommendation of completing this requirement by the end of the second quarter of participation.

The AMD approved Dr. Shiffler's self-study this period and encouraged him to maintain his commitment to self-study.

Medical Knowledge

Comments were not available this period. Comments will be available once Dr. Shiffler begins working with his Preceptor and submitting charts to CPEP for review.

Clinical Judgment and Patient Care

Comments were not available this period. Comments will be available once Dr. Shiffler begins working with his Preceptor and submitting charts to CPEP for review.

Documentation

Comments were not available this period. Comments will be available once Dr. Shiffler begins working with his Preceptor and submitting charts to CPEP for review.

Dr. Shiffler is reminded that the Plan recommended that he participate in a documentation course with a follow-up component. Dr. Shiffler should submit documentation to CPEP by February 5, 2009, of his enrollment in such a course. He should complete the course no later than April 2009, although the follow-up program would be completed after this date.

SUMMARY and RECOMMENDATIONS

Dr. Shiffler actively engaged in educational activities this period. He addressed numerous topics relevant to his Plan and obtained CME credit hours. Education Logs were submitted reflecting ample time dedicated to reading and research. Dr. Shiffler made progress toward completion of the article summary requirement after he received clarification. CPEP encourages Dr. Shiffler to continue his commitment to the educational activities and submit the remaining article summaries by February 5th. He should also continue working on the Core Content Family Medicine Review and submit documentation of the credit hours received.

It will be important for Dr. Shiffler to remain fully engaged in educational activities once the above activities have been completed. According to the Plan, Dr. Shiffler also needs to complete the American Academy of Family Physician's (AAFP) Self-Assessment program. He should also document ongoing participation in case-based CME activities such as those available through the AAFP Case Studies or the Cleveland Clinic for Continuing Education's web site. Additionally, he needs to complete a documentation course that has a follow-up program and complete that follow-up program.

CPEP encourages Dr. Shiffler to monitor his patient volume so that he is able to focus appropriately on his educational activities and make adequate progress in all areas of his Plan. Once the Preceptor has been approved, Dr. Shiffler will initiate the PoC experience as well as Preceptor meetings. He will need to be cognizant of the time commitment needed for these activities as well as for his remaining educational activities.

This Progress Report was created for Dr. Shiffler. It reflects the effort and analysis of CPEP's Associate Medical Director and CPEP's administrative staff.

SIGNATURES

Sharon Miller — 1.6.09
Sharon Miller
Manager, Education Services
Date

Anna Wegleitner — 1/6/09
Anna Wegleitner, M.D.
Associate Medical Director
Date

CENTER FOR PERSONALIZED EDUCATION FOR PHYSICIANS

CPEP Center for Personalized Education for Physicians

PERSONAL AND CONFIDENTIAL

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

TO: Dr. Shiffler

FAX# 304-422-1454

FROM: Sharon Miller
Manager, Education Services

RE: Letter and Progress Report

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 8

DATE: 1/6/09 TIME: 9:15 am m.st.

CALL (303) 577-3232 IF YOU HAVE NOT RECEIVED COMPLETE DOCUMENT.

ADDITIONAL NOTES:

Dr. Shiffler,
The cover letter with the Progress Report and the Report contain the information we discussed yesterday. We have a release for the Board, therefore, we will send a copy of the Report directly to them.

****

Confidentiality Notice

This facsimile transmission and/or the document(s) accompanying may contain confidential information. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify CPEP by telephone to arrange for the return of the documents.

****

CPEP
7351 Lowry Boulevard, Suite 100
Denver, CO 80230
Telephone: 303-577-3232
Fax: 303-577-3241

KANAWHA VALLEY FAMILY PRACTICE CENTER

4605 MacCORKLE AVENUE, S.W.
SOUTH CHARLESTON, WV 25309
TELEPHONE (304) 768-3941

RECEIVED

DEC 30 2008

MARSHALL J. CARPER, M.D.
DIRECTOR

T. RAY PERRINE, M.S., M.D.
ASSISTANT DIRECTOR

Mon. 12/29/08

Mr. Edward C. Martin
Attorney at Law
Flaherty Sensabaugh + Bonasso, PLLC.
200 Capitol St.
P.O. Box 3843
Charleston, WV 25338-3843

Dear Mr. Martin,

Please excuse this handwritten letter, however I no longer have a ~~secretary~~, my computer is presently non-functioning, and even so, my typing is atrocious.

I appreciated speaking with you by phone on those two occasions and have carefully reviewed the information you sent me describing the CPEP educational Plan for Dr. Joel Shifflett.

I officially retired from directing the Kanawha Valley Family Practice Residency program in 1992. Since that time I have been a part time faculty member with WVU but limited to the fields of dermatology and minor surgery, both of which were special interests of mine during my medical career. At the end of August 2008 I retired from doing the latter.

KANAWHA VALLEY FAMILY PRACTICE CENTER

4605 MacCORKLE AVENUE, S.W.
SOUTH CHARLESTON, WV 25309
TELEPHONE (304) 768-3941

MARSHALL J. CARPER, M.D.
DIRECTOR

T. RAY PERRINE, M.S., M.D.
ASSISTANT DIRECTOR

The CPEP recommendations for Dr. Shiffler, in my view, seem quite ambitious, and while I am flattered that The Board of Medicine would consider me capable of serving as a preceptor for him, I feel unqualified for several reasons: ① I have no practice of my own at this time, ② I have had no contact with the issues involved in family medicine for the past 16 years, and while I feel fairly competent in dermatology, this would hardly qualify for the broad scope of education that CPEP is outlining for Dr. Shiffler.

In addition, while the outline from CPEP for this physician would seem desirable in an imperfect world and from a practical standpoint I have serious doubts that a single preceptor will be able to devote the time and effort required to accomplish the indicated goals.

I am truly sorry that I cannot offer more assistance, but I wish the best for your client.

Sincerely yours,

Marshall Carper, M.D.

James E. LeVos MD

December 22, 2008

Joel Shiffler, MD
1230 Garfield Avenue
Parkersburg, WV 26101

Dear Joel,

I regret to have to write this letter to inform you that I am not able to participate in the program drawn up for you by the Center for Personalized Education. I was prohibited by my management from doing this. I was not given all the reasons behind their decision but was advised that I could not proceed with this program of education outlined by CPEP. I had looked forward to being of help but I am sorry that I cannot do so. If there is some other way I may be able to be of assistance to you I will be happy to look into it.

I am sincerely yours,

James E. LeVos, MD.

Punnamma Memorial Rehab Clinic
KALAPALA SESHAGIRI RAO, MD
Board Certified Physical Medicine & Rehabilitation
American Board of Independent Medical Examiners
Internal Medicine
2323 Murdoch Ave.
Parkersburg, WV 26101
Telephone: (304) 485-7500 Fax: (304) 485-6777

01-05-09

RE: CPEP

Dear Dr. Shiffler

I wanted to let you know that I spent several hours on the phone trying to find a Physician that might consider helping you with a Preceptor Program. As you know, we have spoken many times since last July regarding your situation. It is very difficult to find a Physician who has the amount of time that this company (CPEP) is requiring you to complete. As you know when I contacted CPEP is was insane that I had to make so many calls and put forth so much time only to be denied. They did not return calls in a timely manner and they felt everything would work out for you when we talked on numerous occasions. I have put a lot of time and effort into helping you with this situation but it just does not seem to be working out for you.

Just recently I spoke to Dr. Paul Nielson in Ripley, WV to see if he could assist you. Dr. Nielson was very nice and polite but he did not feel he could do it because he is running his own practice and spending his extra time at Jackson General Hospital. However he thought that Dr. Mike McIntosh might consider helping you out. Dr. Nielson checked with Dr. McIntosh and again we are faced with the same response. Dr. McIntosh does not have the time to devote to you for this program. I also know that Dr. Rao and Dr. Katrapati could not do this according to CPEP. You had previously checked with several Physicians in our area and are continuing to do so. If our office can be of any assistance, please feel free to call anytime. Since I devoted so much time to understanding the CPEP requirements and what they expect form a Preceptor, I will be glad to talk with any Physician who might be interested in helping you.

The amount of time that is needed for a preceptor is over whelming. According to the requirement of CPEP it would be difficult for any Physician to run his own clinic and be able to devote adequate time to your needs. Our thoughts and prayers are with you and we hope that you are successful in finding someone to work with CPEP.

Laura Anderson
Office Manager

1-07-2009

(1) Dr Jennifer Levitt. 304-485-0272

(2) Dr. Ernest E. Miller 485-3300.

(3) Dr Brian Powderly 740-423-6766

(4) Dr James Leuos 304-659-2986

(5) Dr. L. Auvil 304-485-7539

(6) Dr Nicholas Landry 740-441-9800
740-441-9400.

(7) Dr Rick Mainero & Dr Domingus
Lancaster, Ohio
thru Sossie Plank.
727-441-4219

(8) Dr John Bean. 304-485-6130

(9) Dr Gary Bono - AHEC Director, Ohio
614-292-2508.

(10) Dr Bob Haley 304-675-1675. Never returned call

(11) Dr Robert Carlisle - Director WVU. Family Practice 304-598-5914 Never returned call

(12) Dr Mitch Shaver - Director Family Practice Residency Marshall University
304-691-1165- Never returned call

(13) Called Physician Coach

(14) Called Locem Tenums

(15) Dr Paul Nielsen

(16) Dr Mike McIntosh

R. Curtis Arnold, DPM
South Charleston

Rev. Richard Bowyer
Fairmont

Michael L. Ferrebee, MD
Morgantown

M. Khalid Hasan, MD
Beckley

Beth Hays, MA
Bluefield

Carlos C. Jimenez, MD
Glen Dale

State of West Virginia
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone 304.558.2921
Fax 304.558.2084

Vettivelu Maheswaran, MD
Charles Town

Bill May, DPM
Huntington

Joe E. Miller, LtCol USMC (Ret), MA
Hurricane

Badshah J. Wazir, MD
South Charleston

Kenneth Dean Wright, PA-C
Huntington

January 14, 2009

FILE COPY

Edward C. Martin, Esq.
P.O. Box 3843
Charleston, West Virginia 25338-3843

Re: Joel D. Shiffler, M.D.

Dear Mr. Martin:

At its recent meeting on January 10, 2009, the Complaint Committee carefully reviewed all your submissions on behalf of Dr. Shiffler. He seems to have increased his efforts to find a preceptor, and they found the Progress Report I of January 2009, from CPEP, to be informative and helpful. It is evident that there remain considerable deficiencies, and the Complaint Committee determined that regardless of all his continuing efforts (which it strongly encourages), without a preceptor in place it is not safe for the public for Dr. Shiffler to continue to practice medicine. The Committee noted that he declined to sign the Consent Order offered to him in November, 2008. The Committee remains disturbed about this serious situation and understands that if he is not able to practice, he would have additional time to devote to his responsibilities under the CPEP Education Plan.

After considerable discussion, the Complaint Committee decided that the enclosed Consent Order is to be its last offer to him. The enclosed Second Amended Consent Order, signed and notarized, should be in these offices by Friday, January 30, 2009, at 4:30 p.m. The Complaint Committee does not want you to alter the Consent Order and return it, signed and notarized. Please first telephone me if you have questions.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

Deborah Lewis Rodecker

Deborah Lewis Rodecker

DLR/eb
Enclosure

[redacted]

PRESIDENT
John A. Wade, Jr., MD
Point Pleasant

VICE PRESIDENT
J. David Lynch, Jr., MD
Morgantown

SECRETARY
Catherine Slemp, MD, MPH
Charleston

Exhibit 10

Charleston

Charleston

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: JOEL DAVID SHIFFLER, M.D.

SECOND AMENDED CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Joel D. Shiffler, M.D. ("Dr. Shiffler") freely and voluntarily enter into the following Second Amended Consent Order pursuant to the provisions of W. Va. Code § 30-3-14, et seq.

FINDINGS OF FACT

1. Dr. Shiffler currently holds a license to practice medicine and surgery in the State of West Virginia, License No. 20094, issued originally in 1999. Dr. Shiffler's address of record is in Parkersburg, West Virginia.

2. On May 22, 2007, the Board and Dr. Shiffler entered into a Consent Order, wherein Dr. Shiffler's West Virginia medical license was suspended for a period of eighteen (18) months following entry of the Order, unless earlier dissolved, and the suspension was stayed immediately, and Dr. Shiffler was permitted to continue to practice medicine without restriction, pending his compliance with the terms and conditions set forth in the May 22, 2007, Consent Order.

3. Within six (6) months following entry of the May 22, 2007, Consent Order, Dr. Shiffler was to attend the Colorado Personalized Education for Physicians ("CPEP") for a comprehensive assessment of his skills as a physician. The assessment was

conducted on June 28 – 29, 2007, and a copy of the assessment was sent directly to the Board's Complaint Committee for review.

4. The CPEP assessment revealed some deficiencies and recommended, in part, that Dr. Shiffler undergo the CPEP Educational Intervention Plan, which includes a program of supervised education. The Educational Intervention Plan would be designed to allow Dr. Shiffler to continue to practice medicine while concurrently addressing educational goals.

5. Pursuant to the May 22, 2007, Consent Order, Dr. Shiffler appeared before the Complaint Committee in January, 2008, to discuss the contents and conclusions of the CPEP assessment report.

6. After meeting with Dr. Shiffler regarding the CPEP assessment report, the Complaint Committee determined that appropriate additional conditions, accommodations, limitations and restrictions were necessary to ensure that Dr. Shiffler is fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

7. The **SUSPENSION** of Dr. Shiffler's license was extended until May 22, 2009, and the **SUSPENSION** was **STAYED**, pending Dr. Shiffler's compliance with arranging for a supervised Educational Intervention Plan through the Colorado Personalized Education for Physicians ("CPEP") and upon the Complaint Committee's receipt of the plan, in its sole discretion, at any time prior to May 22, 2009, the Complaint Committee could recommend appropriate additional conditions, accommodations, limitations or restrictions which the Complaint Committee deemed necessary.

8. The **STAY** of **SUSPENSION** was to remain and currently remains in effect for so long as Dr. Shiffler complies with the Amended Consent Order and completes the Educational Intervention Plan through CPEP and provides documentation of the same.

9. The CPEP Educational Intervention Plan was received by Dr. Shiffler and the Complaint Committee in May, 2008, and by letter of July 31, 2008, Dr. Shiffler was advised that the Education Plan would officially begin August 1, 2008. A letter of August 22, 2008, to Dr. Shiffler, confirmed telephone, chart submission, education logs, and preceptor report dates.

10. On September 16, 2008, Dr. Shiffler was sent a letter inviting him to the November 2008, meeting of the Complaint Committee and stating he was to find a preceptor promptly, and the letter required him to fully document his compliance with the CPEP Education Plan at the November 2008, meeting.

11. Dr. Shiffler attended the meeting in November 2008, and provided evidence from CPEP that he was appropriately participating in the CPEP Education Plan and that he had made efforts to find a preceptor but that he had not been able to find one to date, though having a preceptor in place is a fundamental aspect of completion of the CPEP Education Plan.

12. Pursuant to the Complain Committee's direction, in January 2009, Dr. Shiffler supplied the Complaint Committee with information detailing the numerous physicians and organizations he has contacted to be or find a preceptor for him. He remains without a preceptor, though he has made a good faith effort to find one.

13. A January 2009, Progress Report from CPEP was presented to the Complaint Committee, stating that Dr. Shiffler is actively engaged in educational activities and listing the various activities of the education plan which he has not been able to perform due to having no preceptor.

14. Dr. Shiffler has been practicing medicine and surgery for eighteen (18) months under a **STAYED SUSPENSION** and is months behind in commencing a significant portion of the CPEP Education Plan which may only be completed with a preceptor.

15. The Complaint Committee has determined, in its sole discretion, that additional appropriate conditions, accommodations, limitations and restrictions are necessary to ensure that Dr. Shiffler is fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for patients.

CONCLUSIONS OF LAW

1. The Board has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. W. Va. Code § 30-3-1.

2. Prior to entry of the Consent Order on May 22, 2007, the Board found probable cause to substantiate charges against Dr. Shiffler pursuant to W. Va. Code § 30-3-14(c)(17), 11 CSR 1A 12.1 (e), (j), (w) and (x), and 11 CSR 1A 12.2(a)(C) and 12.2 (d), relating to unprofessional conduct, failing to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician engaged in the same or similar specialty as being acceptable under similar conditions and circumstances,

prescribing controlled substances and other medications for personal use, and failing to conform to the principles of medical ethics of the American Medical Association, including opinion 8.19 regarding self-treatment.

3. The Board determined that it was appropriate and in the public interest to enter into an Amended Consent Order on February 25, 2008, to extend the period of Suspension and Stay because of the length of time which had passed and now the Board has determined that it is appropriate and necessary to enter into a Second Amended Consent Order.

4. This Second Amended Consent Order between the Board and Dr. Shiffler supersedes the prior Amended Consent Order entered on February 25, 2008, between the Board and Dr. Shiffler.

CONSENT

Joel D. Shiffler, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Second Amended Consent Order provided for and stated herein, and the proceedings conducted in accordance with this Second Amended Consent Order, to the following:

1. Dr. Shiffler acknowledges that, prior to entry of the May 22, 2007, Consent Order, he had the following rights, among others: the right to a formal hearing held in accordance with W. Va. Code §30-3-14(h) and §29A-5-1, et seq.; the right to reasonable notice of said hearing; the right to be represented by counsel at his own expense; and the right to cross-examine witnesses against him.

2. By entering into the Consent Order on May 22, 2007, relative to his practice of medicine and surgery in the State of West Virginia, Dr. Shiffler waived all rights to such a hearing.

3. Dr. Shiffler now consents to the entry of this Second Amended Consent Order, which supersedes the Consent Order entered on February 25, 2008, which superseded the May 22, 2007, Consent Order.

4. Dr. Shiffler further understands that this Second Amended Consent Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the Consent of Dr. Shiffler, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. Pursuant to the May 22, 2007, Consent Order, the license to practice medicine and surgery of Dr. Shiffler was **SUSPENDED** for a period of eighteen (18) months, beginning on May 22, 2007, and ending on November 22, 2008, unless earlier dissolved by the Board, and said **SUSPENSION** was **STAYED** immediately, subject to Dr. Shiffler's compliance with the terms and conditions set forth in the Order.

2. Pursuant to the May 22, 2007, Consent Order, the Complaint Committee of the Board retained the right, in its sole discretion, to recommend appropriate additional conditions, accommodations, limitations or restrictions, which it deems

necessary to ensure that Dr. Shiffler is fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

3. Pursuant to the May 22, 2007, Consent Order, if the Complaint Committee of the Board, at the end of the one (1) year period following entry of the May 22, 2007, Consent Order, were to determine, in its sole discretion, that Dr. Shiffler had not made a good faith effort to comply with the terms and conditions of the May 22, 2007, Consent Order, then the Complaint Committee of the Board could recommend that the Board revoke the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, without further hearing or process.

4. The Amended Consent Order of February 25, 2008, extended the suspension of Dr. Shiffler's license for an additional period of six (6) months for a total of two (2) years, until May 22, 2009, stating in pertinent part that the stay should remain in effect during this time.

5. The Complaint Committee has determined that in light of all the facts, it is necessary and in the public interest to extend the suspension of Dr. Shiffler's license to practice medicine and surgery for an additional period of two (2) years from May 22, 2009, until May 22, 2011, and the current **STAY** of **SUSPENSION** shall remain in effect until May 22, 2009, subject to the Complaint Committee's determination, in its sole discretion, that Dr. Shiffler is in satisfactory continuing compliance with his CPEP Education Plan.

6. As of May 22, 2009, if Dr. Shiffler has documented to the Complaint Committee that he has found a preceptor who has agreed to perform, and is so performing, in accordance with the CPEP Education Plan for Dr. Shiffler, and if the Complaint

Committee, in its sole discretion, is satisfied that Dr. Shiffler is in compliance with his CPEP Education Plan, that **STAY** of **SUSPENSION** shall continue in place, unless and until the Complaint Committee recommends to the Board that the **STAY** be **DISSOLVED** due to any non-compliance with this Second Amended Consent Order.

7. As long as this Second Amended Consent Order is in effect, Dr. Shiffler shall continue to receive continued and regular treatment and monitoring by a Board approved Psychiatrist who shall continue to report in writing regularly every sixty (60) days regarding Dr. Shiffler's ability and fitness to practice medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for patients, the last of which reports was received January 5, 2009.

8. If, by May 22, 2009, Dr. Shiffler has failed to obtain a preceptor who has agreed to perform, and is so performing, in accordance with the CPEP Education Plan, the Complaint Committee now has determined he will not be fully capable of practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients, and the **STAY** of **SUSPENSION** will automatically **DISSOLVE** at 11:59 p.m., Dr. Shiffler's license will be in a **SUSPENDED** status, and a Notice of the same will be entered by the Board.

9. The **SUSPENSION** shall remain in effect until May 22, 2011, or until Dr. Shiffler satisfies the Complaint Committee that he has obtained a preceptor who has agreed to perform in accordance with the CPEP Education Plan and that he will be fully compliant with the CPEP Education Plan, whichever event occurs first.

10. Dr. Shiffler shall provide a copy to the Complaint Committee of each and every CPEP Progress Report received by him within ten (10) days upon his receipt of the same.

11. Dr. Shiffler shall provide a copy of this Second Amended Consent Order to Sharon Miller, Manager, Education Services, at CPEP, within ten (10) days of entry.

12. If, at any time prior to May 22, 2011, the Complaint Committee determines, in its sole discretion, that Dr. Shiffler is not making a good faith effort to comply with the terms and conditions of this Second Amended Consent Order, or is unable to practice medicine and surgery with reasonable skill and safety for patients, or is not in satisfactory continuing compliance with his CPEP Education Plan, the Complaint Committee may recommend that the Board **REVOKE** the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, which the Board may do without further hearing or process.

The foregoing Second Amended Consent Order was entered this _____ day of _____, 2009.

WEST VIRGINIA BOARD OF MEDICINE

_____
John A. Wade, Jr., M.D.
President

_____
Catherine Slemp, M.D., M.P.H.
Secretary

_____

Joel D. Shiffler, M.D.

Date: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public in and for said county and state, do hereby certify that Joel D. Shiffler, M.D., whose name is signed above, has this day acknowledged the same before me.

Given under my hand this _____ day of _____, 2009.

My commission expires _____.

_____Notary Public

State of West Virginia
Board of Medicine

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone 304.558.2921
Fax 304.558.2084
www.wvdhhr.org/wvbom

JOHN A. WADE, JR., MD
PRESIDENT

CATHERINE SLEMP, MD, MPH
SECRETARY

J. DAVID LYNCH, JR., MD
VICE PRESIDENT

ROBERT C. KNITTLE
EXECUTIVE DIRECTOR

April 23, 2009

FILE COPY

Edward C. Martin, Esq.
Flaherty, Sensabaugh & Bonasso, PLLC
PO Box 3843
Charleston, West Virginia 25338-3843

Re: Joel David Shiffler, M.D.

Dear Mr. Martin:

I am in receipt of your letter of April 21, 2009, regarding the use of Kalapala S. Rao, M.D., as the CPEP preceptor for Dr. Shiffler. As per your conversation earlier today with our disciplinary counsel, John Lohmann, timing is crucial as we move toward the May 22, 2009, deadline as to what action the Board will have to consider. Within this timeframe, Dr. Shiffler will need to submit the name of a physician who will be replacing Dr. Rao as the treating physician for the Board's approval. In addition, we will also need to be notified immediately upon CPEP's acceptance or denial of Dr. Rao as Dr. Shiffler's preceptor. This information is to be provided in written form to the Board no later than May 21, 2009.

Your effort and cooperation on behalf of Dr. Shiffler in this matter is appreciated.

Sincerely,

Robert C. Knittle

RCK/eb

pc: J.D. Shiffler, M.D.

Exhibit 11

FLAHERTY, SENSABAUGH & BONASSO, P.L.L.C.

Attorneys at Law

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Wheeling, WV 26003
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Fax: (304) 230-6610

Edward C. Martin
tedm@fsblaw.com
(304) 347-4216

April 21, 2009

Via Fax 303-577-3241

Sharon Miller, Manager
Education Services
Center for Personalized Education for Physicians
7351 Lowry Blvd., Suite 100
Denver, CO 80230

Re: Joel D. Shiffler, M. D.
CPEP Education Plan Participant

Dear Sharon:

This is in follow-up to the telephone conversation that I had with you last month regarding Dr. Shiffler's ongoing search for a preceptor which will enable him to complete his requirements under the CPEP education plan. As you and I discussed, Dr. Shiffler and CPEP have conducted independent searches for a preceptor here in West Virginia without success. It is my understanding from speaking with you that CPEP has contacted over 20 different physicians in West Virginia in an effort to locate a preceptor for Dr. Shiffler, but has been unsuccessful in that endeavor. It my further understanding that CPEP has not contacted any additional physicians about serving as a preceptor for Dr. Shiffler since you reported on the company's lack of success in your correspondence to Dr. Shiffler of February 2, 2009.

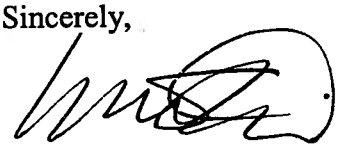
This is to advise that Dr. K. S. Rao of Parkersburg, West Virginia remains willing to invest the time and effort required to serve as a preceptor for Dr. Shiffler under the education plan. I understand that Dr. Rao previously submitted to CPEP an application to serve as Dr. Shiffler's preceptor, but he was denied that opportunity by CPEP because he was serving as one of Dr. Shiffler's present treating physicians. Since that time, both Dr. Shiffler and CPEP have made, in my opinion, substantial efforts to locate another physician willing to assume this role and assist Dr. Shiffler, but those efforts, while genuine, have been to no avail. Given these factors, Dr. Shiffler is willing to stop seeing Dr. Rao as a patient and transfer his care to another physician. Dr. Shiffler would respectfully request that CPEP approve Dr. Rao as his preceptor so that he can engage in the remaining modules of the education plan which require precepted activities. While under these circumstances, Dr. Rao may not be the optimal preceptor, he is

willing to serve in that role where none of the other numerous physicians that have been contacted are willing to do so. Dr. Shiffler and I believe it is of primary importance at this point that he continue toward completion of the education plan's precepted modules and the best option for doing so is through utilizing Dr. Rao as his preceptor.

Please let us know at your earliest opportunity if CPEP needs further information from Dr. Rao, or Dr. Shiffler. In addition, Dr. Rao and Dr. Shiffler are available to speak with you and any other representative of CPEP in an effort to more fully explore this opportunity. In addition, by copy of this letter to Mr. Robert Knittle at the West Virginia Board of Medicine, I am informing him of this information.

Thank you for your courteous attention to this matter.

Sincerely,



Edward C. Martin

ECM/krh

cc: Joel D. Shiffler, M. D.
Robert Knittle, Executive Director

08782-14670

Lohmann, John A

From: Martin, Ted [TMartin@fsblaw.com]
Sent: Friday, June 05, 2009 11:10 AM
To: Lohmann, John A
Subject: RE: Dr. Schiffler

Thanks. I will forward to my client and discuss with him. Should be able to get back to you by early to mid next week.

Edward C. "Ted" Martin
Flaherty, Sensabaugh & Bonasso, PLLC
P.O. Box 3843
Charleston, West Virginia 25338
(304) 347-4216 direct
(304) 345-0260 fax
Email: tedm@fsblaw.com

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From: Lohmann, John A [mailto:John.A.Lohmann@wv.gov]
Sent: Friday, June 05, 2009 10:55 AM
To: Martin, Ted
Subject: Dr. Schiffler

Ted:
Good morning. Attached is the Second Amended Consent Order for your review.

John A. W. Lohmann
Disciplinary Counsel
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, West Virginia 25311
Telephone: 304/558-2921 x215
Facsimile: 304/558-2084

Exhibit 12

Lohmann, John A

From: Lohmann, John A
Sent: Friday, June 05, 2009 10:55 AM
To: 'tedm@fsblaw.com'
Subject: Dr. Schiffler
Attachments: Shiffler Amended CO 09 jal draft.doc

Ted:
Good morning. Attached is the Second Amended Consent Order for your review.

John A. W. Lohmann
Disciplinary Counsel
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, West Virginia 25311
Telephone: 304/558-2921 x215
Facsimile: 304/558-2084

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: JOEL DAVID SHIFFLER, M.D.

SECOND AMENDED CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Joel D. Shiffler, M.D. ("Dr. Shiffler") freely and voluntarily enter into the following Second Amended Consent Order pursuant to the provisions of W. Va. Code § 30-3-14, *et seq.*

FINDINGS OF FACT

1. Dr. Shiffler currently holds a license to practice medicine and surgery in the State of West Virginia, License No. 20094, issued originally in 1999. Dr. Shiffler's address of record is in Parkersburg, West Virginia.

2. On May 22, 2007, the Board and Dr. Shiffler entered into a Consent Order, whereby Dr. Shiffler's West Virginia medical license was suspended for a period of eighteen (18) months following entry of the Order, unless earlier dissolved, and the suspension was stayed immediately, and Dr. Shiffler was permitted to continue to practice medicine without restriction, pending his compliance with the terms and conditions set forth in the May 22, 2007, Consent Order.

3. Within six (6) months following entry of the May 22, 2007, Consent Order, Dr. Shiffler was to attend the Colorado Personalized Education for Physicians ("CPEP") for a comprehensive assessment of his skills as a physician. The assessment was

conducted on June 28 – 29, 2007, and a copy of the assessment was sent directly to the Board's Complaint Committee for review.

4. The CPEP assessment revealed some deficiencies and recommended, in part, that Dr. Shiffler undergo the CPEP Educational Intervention Plan, which includes a program of supervised education. The Educational Intervention Plan would be designed to allow Dr. Shiffler to continue to practice medicine while concurrently addressing educational goals.

5. Pursuant to the May 22, 2007, Consent Order, Dr. Shiffler appeared before the Complaint Committee in January, 2008, to discuss the contents and conclusions of the CPEP assessment report.

6. After meeting with Dr. Shiffler regarding the CPEP assessment report, the Complaint Committee determined that appropriate additional conditions, accommodations, limitations or restrictions were necessary to ensure that Dr. Shiffler practiced medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

7. On February 25, 2008, the Board and Dr. Shiffler entered into an Amended Consent Order, wherein Dr. Shiffler's West Virginia medical license remained suspended for an extended period of time until May 22, 2009, unless earlier dissolved, and the suspension was stayed immediately, and Dr. Shiffler was permitted to continue to practice medicine without restriction, pending his compliance with the terms and conditions set forth in the May 22, 2007, Consent Order.

8. Prior to the expiration of the February 25, 2008 Order (at the end of May 22, 2009), Dr. Shiffler communicated with the Board, through counsel, regarding his

progress on his self-study in the CPEP program as well as his difficulty in obtaining an acceptable preceptor pursuant to the CPEP plan.

9. Prior to the expiration of the February 25, 2008 Order (at the end of May 22, 2009), Dr. Shiffler did obtain an acceptable and CPEP-approved preceptor to complete the CPEP plan.

10. The Assistant Medical Director of CPEP has communicated with counsel to the Board indicating that the completion of Dr. Shiffler's CPEP plan, being delayed by the difficulty in obtaining an acceptable preceptor, will now take an additional twelve (12) months to complete.

11. The Complaint Committee reviewed the materials submitted by Dr. Shiffler regarding his CPEP plan and upon due consideration determined that continuing additional conditions, accommodations, limitations or restrictions are necessary in order to ensure that Dr. Shiffler practices medicine and surgery in the State of West Virginia with a reasonable degree of skill and safety for his patients.

CONCLUSIONS OF LAW

1. The Board has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. W. Va. Code § 30-3-1.

2. Prior to entry of the Consent Order on May 22, 2007, the Board found probable cause to substantiate charges against Dr. Shiffler pursuant to W. Va. Code § 30-3-14(c)(17), 11 CSR 1A 12.1 (e), (j), (w) and (x), and 11 CSR 1A 12.2(a)(C) and 12.2 (d), relating to unprofessional conduct, failing to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician engaged in the

same or similar specialty as being acceptable under similar conditions and circumstances, prescribing controlled substances and other medications for personal use, and failing to conform to the principles of medical ethics of the American Medical Association, including opinion 8.19 regarding self-treatment.

3. The Board has determined that it is appropriate and in the public interest to enter into this Second Amended Consent Order.

4. This Second Amended Consent Order between the Board and Dr. Shiffler supersedes the prior Consent Order and Amended Consent Order entered on May 22, 2007, and February 25, 2008, respectively, between the Board and Dr. Shiffler.

CONSENT

Joel D. Shiffler, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Second Amended Consent Order provided for and stated herein, and the proceedings conducted in accordance with this Second Amended Consent Order, to the following:

1. Dr. Shiffler acknowledges that, prior to entry of the May 22, 2007, Consent Order, he had the following rights, among others: the right to a formal hearing held in accordance with W. Va. Code §30-3-14(h) and §29A-5-1, *et seq.*; the right to reasonable notice of said hearing; the right to be represented by counsel at his own expense; and the right to cross-examine witnesses against him.

2. By entering into the Consent Order on May 22, 2007, relative to his practice of medicine and surgery in the State of West Virginia, Dr. Shiffler waived all rights to such a hearing.

3. Dr. Shiffler now consents to the entry of this Second Amended Consent Order, which supersedes the Consent Order and Amended Consent Order entered on May 22, 2007, and February 25, 2008, respectively.

4. Dr. Shiffler further understands that this Second Amended Consent Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the Consent of Dr. Shiffler, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. Pursuant to the May 22, 2007, Consent Order, the license to practice medicine and surgery of Dr. Shiffler was suspended for a period of eighteen months (18) months, beginning on May 22, 2007, and ending on November 22, 2008, unless earlier dissolved by the Board, and said suspension was **STAYED** immediately, subject to Dr. Shiffler's compliance with the terms and conditions set forth in the Order.

2. Pursuant to the May 22, 2007, Consent Order, the Complaint Committee of the Board retained the right, in its sole discretion, to recommend appropriate additional conditions, accommodations, limitations or restrictions, which it deemed necessary to ensure that Dr. Shiffler practiced medicine and surgery in the State of West Virginia with a reasonable degree of skill and safety for his patients.

3. Pursuant to the May 22, 2007, Consent Order, if the Complaint Committee of the Board, at the end of the one (1) year period following entry of the May 22, 2007, Consent Order, were to determine, in its sole discretion, that Dr. Shiffler had not made a good faith effort to comply with the terms and conditions of the May 22, 2007, Consent Order, then the Complaint Committee of the Board could have recommended that the Board revoke the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, without further hearing or process.

4. Notwithstanding provisions in the May 22, 2007, Consent Order and the February 25, 2008 Amended Consent Order authorizing the revocation of Dr. Shiffler's license to practice medicine and surgery in the event of non-compliance, the Board has determined that the suspension of Dr. Shiffler's license be extended for an additional period of twelve (12) months for a total of three (3) years, and the stay remain in effect during this time, provided that certain additional conditions and limitations are placed upon Dr. Shiffler's license to practice medicine and surgery in the State of West Virginia, as set forth in more detail below.

5. The license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, License No. 20094, remains **SUSPENDED,** which suspension is now extended until May 22, 2010, unless earlier dissolved as described in more detail below, and the suspension remains **STAYED** immediately, and Dr. Shiffler may continue to practice medicine without restriction, pending his compliance with the terms and conditions set forth in this Second Amended Consent Order.

6. The Complaint Committee of the Board may, in its sole discretion, at any time prior to May 22, 2010, recommend appropriate additional conditions,

accommodations, limitations or restrictions, which it deems necessary to ensure that Dr. Shiffler completes the Board approved Educational Intervention Plan and is practicing medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

7. The stay of suspension referenced in this Second Amended Consent Order shall remain in effect for so long thereafter as Dr. Shiffler complies with the terms of this Second Amended Consent Order, and provided further that Dr. Shiffler also completes the Board approved Educational Intervention Plan through CPEP, and provides documentation regarding completion of the same to the Board.

8. Upon full compliance by Dr. Shiffler of the Educational Intervention Plan, as determined by the Complaint Committee of the Board, the Committee may recommend that the Board **DISSOLVE** the **SUSPENSION** provided for herein.

9. As long as this Second Amended Consent Order is in effect, Dr. Shiffler shall continue to receive continued and regular treatment and monitoring by a Board approved psychiatrist who shall report in writing to the Board every sixty (60) days regarding Dr. Shiffler's ability and fitness to practice medicine and surgery in the State of West Virginia, with a reasonable degree of skill and safety for his patients.

10. If the Complaint Committee of the Board determines, in its sole discretion, that Dr. Shiffler has failed to participate in, and/or complete, the CPEP Educational Intervention Plan described herein, or if he otherwise violates any term or condition of this Second Amended Consent Order, the Complaint Committee of the Board reserves its right to recommend that the Board immediately **LIFT** the **STAY** of **SUSPENSION** for the remainder of the term thereof, which the Board may do without

further hearing or process.

11. At the end of May 22, 2010, if the Complaint Committee of the Board determines, in its sole discretion, that Dr. Shiffler has not complied with the terms and conditions of this Second Amended Consent Order, then the Complaint Committee of the Board may recommend that the Board **REVOKE** the license to practice medicine and surgery in the State of West Virginia previously issued to Dr. Shiffler, which the Board may do without further hearing or process.

12. Dr. Shiffler and the Board agree that the effective date of this Second Amended Consent Order is May 23, 2009.

The foregoing Amended Consent Order was entered this _____ day of _____, 2009.

WEST VIRGINIA BOARD OF MEDICINE

_____
John A. Wade, Jr., M.D.
President

_____
Catherine Slemp, M.D., M.P.H.
Secretary

_____
Joel D. Shiffler, M.D.
Date: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public in and for said county and state, do hereby certify that Joel D. Shiffler, M.D., whose name is signed on the previous page, has this day acknowledged the same before me.

Given under my hand this _____ day of _____, 2009.

My commission expires _____.

_____Notary Public

Lohmann, John A

From: Martin, Ted [TMartin@fsblaw.com]
Sent: Friday, July 10, 2009 2:23 PM
To: Lohmann, John A
Subject: Shiffler
Attachments: Lohmann, John letter (July 10, 2009) (C0422588).PDF

Importance: High

John,

Attached is a letter which is essentially a status report of what has occurred with regard to Rao, etc. I have arranged to speak with my client at the end of the day after his office hours in an effort to discuss potential solutions to the situation regarding how might we move forward with the remediation, and possibly convince Dr. Rao to reconsider. I'll then plan to email you my thoughts of how we might proceed (although it will probably be late Saturday before I can get to that). If you want to discuss over the weekend feel free to call my cell ' I'm hopeful that I can propose something that makes sense and can be done, but as you know this is a challenging problem.

Ted

Edward C. "Ted" Martin
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Email: tedm@fsblaw.com

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Exhibit 13

FLAHERTY, SENSABAUGH & BONASSO, P.L.L.C.

Attorneys at Law

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Edward C. Martin
tedm@fsblaw.com
(304) 347-4216

July 10, 2009

Via E-Mail and U.S. Mail

John A. Lohmann
Disciplinary Counsel
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

Re: Joel D. Shiffler, M.D.

Dear John:

This is in follow up to our recent discussions concerning the apparent decision of Dr. K. S. Rao to back out of his commitment to serve as a preceptor for Dr. Shiffler under the CPEP education plan. As you are aware, Dr. Shiffler and I have made ongoing efforts to convince Dr. Rao to reconsider his position and agree to serve as Dr. Shiffler's preceptor. These efforts included, among other things, my representation to Dr. Rao that you would be willing to meet with him as a representative of the Board of Medicine to provide him with whatever reassurance that you could offer with respect to the Board's appreciation of the important service that Dr. Rao would be providing by agreeing to serve as Dr. Shiffler's preceptor.

I understood from Dr. Rao's office manager, Laura Anderson, that Dr. Rao would be directing a letter to me explaining his reasons for declining to serve as a preceptor for Dr. Shiffler after having earlier accepted that responsibility. Thus far, however, I have not received any correspondence from his office in that regard. On July 7, I faxed a letter to Dr. Rao asking him to reconsider his decision and made the offer that you and I were willing to meet with him to discuss his concerns, but I have received no response. It is my understanding from speaking with Ms. Anderson that Dr. Rao felt, based upon further contact with CPEP's associate medical director, that he was placing himself at risk by agreeing to serve as a preceptor.

Prior to this recent development with regard to Dr. Rao, it was Dr. Shiffler's expectation that he would be able to complete the CPEP education plan within a twelve month, or less,

timeframe due to the fact that he had secured the availability of a preceptor which he had been unable to obtain since the plan's inception. Given the fact that the Second Amended Consent Order specifically provides that Dr. Shiffler has obtained an acceptable and CPEP approved preceptor to complete the CPEP plan, that Order is no longer accurate in light of Dr. Rao's decision to abandon the preceptor role. Therefore, Dr. Shiffler can no longer enter into an agreement with the Board that is not reflective of the current situation.

Obviously, Dr. Shiffler and I are disappointed in Dr. Rao's decision. Our efforts to convince him to keep his commitment have thus far been unsuccessful. Given the significant difficulty which we and CPEP encountered in locating a willing preceptor for Dr. Shiffler, this ultimately led us all to accept Dr. Rao despite the concerns that CPEP had regarding his suitability for that role. Now that it appears we are once again without a preceptor, it leads us to the inevitable conclusion that the CPEP plan, as presently framed, cannot be realistically completed with regard to the precepted education modules.

As you are aware from the recent progress report submitted by CPEP, Dr. Shiffler has been diligent in working through the education plan and wanted to complete it. He has expended substantial time and invested thousands of dollars toward his remediation with regard to the CPEP plan. I am certainly willing to work with you to explore alternatives to the present plan in an effort to complete the remediation in a manner which is fair and equitable to my client, while also providing the assurance needed by the Board that Dr. Shiffler is practicing medicine in a safe and competent manner.

Please contact me at your convenience if you wish to discuss these issues further. Thank you for your courteous attention in this regard.

Sincerely,

Edward C. Martin

ECM/jsr

cc: Joel D. Shiffler, M.D.

CERTIFICATE OF SERVICE

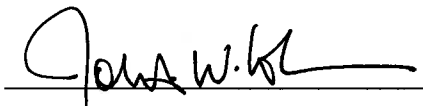
I, John A. W. Lohmann, Counsel for the West Virginia Board of Medicine, do hereby certify that I have served the following NOTICE OF REVOCATION upon Joel David Shiffler, M.D., and his counsel of record, all on the 13th day of July, 2009, by hand delivery to Joel David Shiffler, addressed as follows:

Joel David Shiffler, M.D.
7623 Emerson Ave.
Parkersburg, WV 26104

And mailing to his address of record by depositing a copy of the same in the United States Mail, postage prepaid, Certified, addressed as follows:

Joel David Shiffler, M.D.
P.O. Box 4370
Parkersburg, WV 26104

And faxed to Edward C. Martin, Esq. at fax number 304-345-0260



John A. W. Lohmann
W.Va. Bar No. 6343